COMMONWEALTH OF THE BAHAMAS 2022

IN THE SUPREME COURT COM/com/00060

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

FIFTH AFFIDAVIT OF BRIAN C. SIMMS KC (Sanction of Global Settlement Agreement)

I, BRIAN SIMMS KC, of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas make Oath and Say as follows:

1. Kevin G. Cambridge, Peter Greaves, and I are the duly appointed joint official liquidators ("**JOLs**" or "**Joint Official Liquidators**") of FTX Digital Markets Ltd. ('In Official Liquidation') ("**FTX DM**"), a company incorporated in the Commonwealth of The Bahamas, and which was operated as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (as amended) (the "**DARE Act**"). I am duly authorized to make this Affidavit on behalf of the JOLs and FTX DM.

2. This Affidavit is made in support of the JOLs' application made by way of Summons filed herein on 11th January 2024 **("the GSA Approval Application")** seeking *inter alia* sanction of the Global Settlement Agreement dated 19th December 2023, including all exhibits, annexes and schedules attached thereto **("the GSA"** or **"the Agreement")** between FTX DM (acting by the JOLs as agents and without personal liability) and FTX Trading Ltd., FTX Property Holdings Ltd., West Realm Shires Inc., Alameda Research LLC and Clifton Bay Investments for themselves and on behalf of their affiliated debtors and debtors-in-possession **("the Debtors")**. The GSA is subject to the approval of this Honourable Court and the US Court, which approvals the parties have agreed to seek promptly.

3. The Summons also seeks directions for FTX DM on the footing that it may be a trustee and for relief from liability of the JOLs, as officers of FTX DM on the footing that FTX DM may be a trustee.

4. For the reasons as comprehensively set out below (and as set out in the Affidavit of Luke Groth to be filed herein **("the Groth Affidavit")**, the JOLs are of the considered view that the GSA and ancillary agreements are undoubtedly in the best interests of the official liquidation of FTX DM, its customers and creditors.

5. The facts and matters referred to herein are, unless otherwise stated, within my own knowledge or are obtained from documents in the possession of the JOLs, PricewaterhouseCoopers **("PwC")** or the legal teams at Lennox Paton **("LXP")** or White & Case LLP **("W&C")** as the case may be, and are true to the best of knowledge, information and belief. Where the matters deposed hereto are not within my knowledge, they are derived from the sources which I identify and are true to the best of my information and belief.

6. There is now produced and shown to me marked **"BCS-1"** a paginated bundle of documents to which I shall refer in the course of my Affidavit. References to page numbers in the Affidavit are references to page numbers in the said paginated bundle unless otherwise stated.

7. Insofar as communications are referred to in this Affidavit which are subject to legal professional or other privilege, such references are made without any intention to waive that privilege, and nothing herein should be taken as waiving such privilege.

8. Unless otherwise stated, the abbreviations, nomenclatures and definitions as set out in the GSA are adopted herein. Reference will also be made to the JPLs' (as we then were) First, Second and Third Interim Reports (collectively referred to as **"the JPLs Reports")** dated 8th February 2023, 24th May 2023 and 9th November 2023 respectively.

9. On 10th November 2023, the Honourable Mr. Justice Loren Klein made an Order **("the JOLs' Appointment Order")** that the Company be wound up in accordance with the provisions of the Companies Act, 1992 (as amended) and as applicable to the winding up of International Business Companies under the Companies (Winding Up Amendment) Act ("**CWUAA**"). Pursuant to the JOLs' Appointment Order, Kevin Cambridge, Peter Greaves

and I are the Joint Official Liquidators of FTX DM. At pages **[1]-[4]** is a copy of the JOLs' Appointment Order.

10. The JOLs and FTX DM seek the following relief and related relief by way of the GSA Approval Application:

1. *"An order, pursuant to the Companies Act, section 205(3) and the Fourth Schedule, Part 1, paragraphs 3 to 9, sanctioning the exercise of the JOLs' powers to cause FTX DM to enter into the Global Settlement Agreement* ***("the GSA")*** *and agreements ancillary thereto, namely the (i) Exclusive Sales Agency Agreement, (ii) the Loan Agreement both dated 19th December 2023; (iii) Deed of Assignment dated 19th December 2023; (iv) Declaration of Trust dated 19 December 2023; (v) Deed of Indemnity dated 20 December 2023.*

2. *Without prejudice to the generality of the order of sanction in paragraph 1 above:*

    a. *Pursuant to paragraph 3 of the Fourth Schedule, Part 1, an order sanctioning the JOLs' power to dispose of property of FTX DM (on the terms as provided by the GSA) to FTX Trading Ltd.* ***("FTX Trading")*** *and its affiliated debts and debtors-in-possession* ***("the Debtors")*** *as identified in the GSA.*

    b. *Pursuant to paragraph 4 of the Fourth Schedule, Part 1, an order sanctioning the JOLs' power to pay certain creditors (other than customers) of FTX DM distributions from the Non-Customer Claims Pool of US$15 million as defined in the GSA.*

    c. *Pursuant to paragraphs 5 and 6 of the Fourth Schedule, Part 1, an order sanctioning the JOLs' power to compromise (in the terms of the GSA) the claims made by Alameda Research LLC, Alameda Research Ltd., FTX Trading Ltd., West Realm Shires Inc and West Realm Shires Services Ltd.,* ***("the Adversary Proceeding Plaintiffs")*** *against FTX DM and the claims and counterclaims made by FTX DM against all the Debtors in proceedings* ***("the Adversary Proceeding")*** *in the United States Bankruptcy Court for the District of Delaware* ***("the US Bankruptcy Court").***

    d. *Pursuant to paragraph 6 of the Fourth Schedule, Part 1, an order sanctioning the JOLs' power to compromise (in the terms of the GSA) the claims of FTX DM against FTX Property Holdings Ltd* ***("Propco")*** *and all remaining Debtors.*

    e. *Pursuant to paragraph 7 of the Fourth Schedule, Part 1, an order sanctioning the manner in which the JOLs have dealt with the following issues in the GSA relating to or affecting the assets or the winding up of FTX DM, specifically:*

        i. *If paragraph 7 applies to a discharge of a debt, liability or claim, an order sanctioning the exercise of the JOLs' power in causing FTX DM on the terms of the GSA to discharge the debt, liability or claim that FTX DM claims it has against the Debtors.*

ii. *An order sanctioning the exercise of the JOLs' power to effect a form of pooling of the assets of FTX DM and the Debtors as provided for in the GSA and for the JOLs to make distributions from the pool to customers of FTX DM who opt to prove in the official liquidation of FTX DM.*

iii. *An order sanctioning the exercise of the JOLs' power to impose a valuation date for customers' and creditors' claims of 11th November 2022 rather than the date of the winding-up order in respect of FTX DM made by this Honourable Court.*

iv. *An order sanctioning the exercise of the JOLs' power to impose a Final Bar Date of 15th May 2024 for creditors and customers wishing to prove in the official liquidation.*

v. *An order sanctioning the exercise of the JOLs' power not to admit to proof any DM Customer Entitlement Claim that has not commenced KYC by the KYC Cut-off Date.*

vi. *An order sanctioning the exercise of the JOLs' power to value at nil claims by customers to FTT digital assets and to have their claims treated as DM Excess Claims in accordance with the provisions of the GSA.*

vii. *An order sanctioning the exercise of the JOLs' power, at the request of the Debtors, to permit customers holding DM Customer Entitlement Claims to receive distributions on a digital currency exchange operated by any buyer of the FTX.com Exchange.*

viii. *An order sanctioning the exercise of the JOLs' power to exclude certain parties from proving in the official liquidation.*

ix. *An order sanctioning the exercise of the JOLs' power to exclude certain categories of claim from proof in the official liquidation.*

x. *An order sanctioning the exercise of the JOLs' power to agree to a dispute resolution process in the terms of the GSA including the procedure involving the concurrent jurisdiction of the US Bankruptcy Court and this Honourable Court which is consistent with the Judicial Insolvency Network's Guidelines for Communication and Cooperation between Courts in Cross-Border Matters.*

f. *If, and to the extent that the properties in the name of Propco are, in fact, property of FTX DM, an order sanctioning the JOLs' power pursuant to paragraph 8 of the Fourth Schedule, Part 1 to cause FTX DM to acquiesce in the sale by Propco of any and all of those properties and for the proceeds of sale to be dealt with in accordance with the terms of the GSA.*

g. *Pursuant to paragraph 9 of the Fourth Schedule of Part 1, an order sanctioning the exercise of the JOLs' power to cause FTX DM to borrow money on the terms of the Loan Agreement dated 19th December 2023 in the sum of US$45 million.*

3. *In so far as assets of FTX DM may have been held on trust for customers of FTX DM, an order under the Trustee Act 1998, sections 77 and 79 and/or the inherent jurisdiction of this Honourable Court directing FTX DM, acting by its JOLs, to distribute such assets pursuant to the terms of the GSA to customers who elect to prove in the official liquidation of FTX DM.*

4. *An order pursuant to the Trustee Act, 1998 section 73, relieving the JOLs and FTX DM from any personal liability insofar as the JOLs have caused FTX DM to commit any breach of trust in causing FTX DM to enter into the GSA and/or making distributions to customers who elect to prove in the official liquidation of FTX DM on the ground that they have at all times acted honestly and reasonably and ought fairly to be excused for any breach of trust that they have committed in connection with the entry into the GSA or making distributions to customers in accordance with the GSA.*

5. *An order giving liberty to the JOLs to withdraw the Directions Application issued on 15th March 2023.*

6. *An order that there be an extension to the statutory ninety (90) day deadline to hold the First Creditors Meeting due to the fact that this Summons for sanction of the GSA will be heard on 22nd January 2024.*

7. *An Order that the costs of and occasioned by this Summons be paid out of the assets of the FTX DM and/or any assets that may be trust assets.*

8. *Such further or other relief as the Court may deem necessary."*

11. This Affidavit should be read together with the Groth Affidavit. The Groth Affidavit supports the instant application in that it describes the forensic investigation and analysis of the books and records of the Debtors and FTX DM made available which has been conducted by PwC. Mr. Groth, as set out in his affidavit, is the leader of PwC Hong Kong's Forensic Technology practice with an expertise in, among other things, the investigation of financial services data platforms including those dealing in cryptocurrencies and digital assets.

Index Of Parts of Affidavit

A. Urgency of Application

12. As set out above, the GSA was entered into on 19th December 2023 and is conditional upon approval of the Supreme Court of The Bahamas and the US Court. The application for the sanction of the GSA is particularly time sensitive as it was agreed that the application should be filed no later than 10th January 2023. That is, in accordance with *Section 4.01(a)* of the GSA, it was agreed that FTX DM,

> *"shall use commercially reasonable efforts to:*
>
> > *(a)* ***by no later than January 10, 2024, (x) file applications to obtain orders from the Bahamas Court, each in form and substance reasonably satisfactory to the Debtors sanctioning (i) this Agreement; (ii) the Properties Exclusive Sales Agency Agreement and the Propco Sale Procedures; and (iii) the Advance DM Loan and (y) file a motion to approve this Agreement in the Bankruptcy Court with respect to the Chapter 15 Case ...; provided that FTX DM agrees to file the application seeking an order from the Bahamas Court sanctioning the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures as soon as practicable."***
>
> ***[Emphasis Added]***

The Section 1.0 (e) of the GSA also provides as follows:

> *"e) if any payment, distribution, act or deadline under this Agreement is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date;"*

B. Detailed Background

13. FTX DM was incorporated in The Bahamas as an International Business Company, on 22nd July 2021, and was granted a license and registration by the Securities Commission of The Bahamas **("the SCB")** under the DARE Act to conduct business as a digital asset business **("DAB")** on 10th September 2021. FTX DM is a wholly owned subsidiary of FTX Trading Ltd **("FTX Trading")**, a company incorporated in Antigua and Barbuda. On 10th November 2022, the SCB (as regulator) suspended FTX DM's license to operate from The Bahamas as a DAB.

14. FTX DM was the named service provider of the substantial majority of the services offered to FTX International's (non-US) customers of the FTX International Platform. Provision of such services is currently suspended due to the suspension of FTX DM's licence and customers are not permitted access to the platform due to the ongoing insolvency procedures across the FTX Group. Between 3rd May 2022 and 8th November 2023, the Directors of FTX DM were Samuel Bankman-Fried ("SBF") and Ryan Salame (together, **"the Board"**). The directors of FTX DM as of the 8th November 2023 are the JOLs.

15. FTX DM was an integral part of the FTX Group, and a key service provider to customers of the FTX International Platform; providing services such as, but not limited to, strategic management and direction for FTX International in the areas of platform development, finance, legal, client onboarding, settlements and customer support.

16. The services offered to users of the FTX International Platform allowed customers to transact in Digital Assets and derivatives thereof, as well as engage in margin trading, enter into volatility contracts, lend their Digital Assets in return for a staking reward, and finally, to engage in OTC trading with counterparties.

17. Prior to relocation to The Bahamas, management of the FTX International Platform had been based out of Hong Kong, where the FTX Group had initially been headquartered after being founded in May 2019. However, a decision was taken to migrate the business, senior management and key employees to FTX DM in The Bahamas; an exercise that commenced in mid-2021.

18. As part of that migration, 38 employees are understood to have relocated to The Bahamas from other FTX Group companies, based out of Hong Kong and the US. In the period prior to the presentation by the SCB of the winding up Petition and the appointment of joint provisional liquidation **("JPLs")** (as to which see paragraph 22 below), FTX DM employed a total of 83 individuals.

19. The Terms of Service governing the contractual relationship with customers of the FTX International Platform were updated on 13 May 2022 to include FTX DM as a party to the Terms of Service. As a result, there is evidence showing that, in addition to the transition of the employees and the operating business from FTX Trading, there was likely a migration of the customers who continued to use the platform to FTX DM.

20. Based on the limited information available to the JOLs to date, they believe that if migration did take place FTX DM would have over 1.3m customers, including 10,500 institutional customers, in over 230 jurisdictions worldwide. Prior to its collapse, the FTX Group operated the world's third largest cryptocurrency exchange by volume.

C. Winding Up Petition, Provisional Liquidation and Official Liquidation of FTX DM

21. On 10th November 2022, the Honourable Mr. Chief Justice Ian Winder heard the Petition of SCB at an urgent ex parte hearing and appointed me as the provisional liquidator of FTX DM. On 14th November 2022, the Honourable Mr. Chief Justice Ian Winder appointed Mr. Kevin G. Cambridge and Mr. Peter Greaves as additional provisional liquidators alongside myself. At pages **[5]-[12]** are true copies of the Orders of this Court appointing the JPLs **("the Appointment Orders").**

22. As set out at [2] of the Appointment Orders, the JPLs were authorised by this Honourable Court to take any action that we considered fit under the CWUAA to maintain the value of the assets owned or managed by the Company or to carry out the functions for which we were appointed, including:

22.1. with the sanction of the court:

a. power to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or which the company may be rendered liable, *Fourth Schedule, Part I, Paragraph [5] of the CWUAA*

b. power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company or alleged contributory or other debtor or person apprehending liability to the company. *Fourth Schedule, Part I, Paragraph [6] of the CWUAA*

c. power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it. *Fourth Schedule, Part I, Paragraph [7] of the CWUAA*

22.2. with or without the sanction of the court:

a. the power to do all other things incidental to the exercise of our powers. *Fourth Schedule, Part II, Paragraph [9] of the CWUAA*

23. On 11th November 2022, Samuel Bankman-Fried appointed John J. Ray III as CEO of multiple FTX Group entities. Thereafter, on 11th November and 14th November 2022, 102 voluntary petitions were filed in the United States Bankruptcy Court for the District of Delaware **("Bankruptcy Court")** under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (as amended, **"the Bankruptcy Code"**) for FTX Trading and 101 affiliated entities **("the Debtors")**. FTX DM was never made subject to Chapter 11 due to the fact that it was already in Provisional Liquidation.

24. On 15th February 2023, the Bankruptcy Court granted an order recognizing the Provisional Liquidation of FTX DM as a foreign main proceeding and the JPLs as the foreign representatives of FTX DM as defined under Chapter 15 of the Bankruptcy Code.

D. Background to the GSA and Settlement Negotiations

25. On 9th March 2023, the JPLs wrote to the Debtors to inform them of our intention to file the motion for relief from the Chapter 11 automatic stay **("the Lift Stay Motion")** in the Bankruptcy Lift Stay Motion in the Bankruptcy Court as a precursor to issuing the application for directions **("the Directions Application")** before this Honourable Court. The Directions Application is dealt with further below at [97].

26. On 19th March 2023, the Debtors filed an adversary proceeding against FTX DM and the JPLs in the Bankruptcy Court **("the Adversary Proceeding")**. In the Adversary Proceeding, the Debtors requested declarations that (a) no customers migrated from FTX Trading to FTX DM; (b) FTX DM had no ownership interest of any kind in any cryptocurrency, fiat currency, customer information, or intellectual property associated with the FTX International Platform ("the Contract Claims"); and (c) every transaction that FTX DM was involved in during its existence was fraudulent and was subject to avoidance ("the Avoidance Claims"). On 14th June 2023, the Debtors amended their complaint ("the Amended Complaint"), asserting two additional causes of action against FTX DM that: (i) FTX DM has no interest in the Debtors' customer relationships; and (ii)

in the event FTX DM holds any cash or cryptocurrency pursuant to the 2022 Terms of Service, such cash was held by FTX DM as agent for the Debtors ("the Custody Claims"). At pages **[285]-[317]** is a copy of the Amended Complaint.

27. The Adversary Proceeding was filed on the night before the hearing of the JPLs' application in this Honourable Court (of which the Debtors were given notice) for leave to seek, if necessary, from the Bankruptcy Court relief from the automatic stay in the Chapter 11 cases so that the Directions Application could proceed unhindered in this Court.

28. FTX DM and the JPLs filed a motion to dismiss the Adversary Proceeding on 8th May 2023 arguing that the Adversary Proceeding should be dismissed entirely, on various grounds, including on the basis that (i) the Adversary Proceeding was void because it violated FTX DM's automatic stay imposed by Chapter 15 and (ii) the fraudulent transfer counts were improperly pled and unsubstantiated and therefore should be dismissed.

29. Further to the hearing of the JPLs' application referred to at paragraph 27 above, on 20th March 2023, the JPLs obtained an Order **("the Lift Stay Sanction Order")** from this Honourable Court sanctioning the JPLs' the Lift Stay Motion. The Lift Stay Sanction Order recorded that determination of the issues raised by the Directions Application was fundamental to FTX DM's liquidation progressing. At pages **[13]-[15]** is a copy of the Lift Stay Sanction Order.

30. On 12th July 2023, the JPLs answered the Adversary Proceeding and filed: (i) counterclaims against the Debtors alleging, inter alia, that the Debtors had breached the Cooperation Agreement and the automatic stay in FTX DM's Chapter 15 case (collectively, the "JPL Counterclaims"); (ii) a motion to dismiss the Debtors' Avoidance Claims and Custody Claims ("the JPLs Motion to Dismiss"); and (iii) a motion to join all of the Debtors as counterclaim defendants ("the JPLs Motion to Join") [Adv. Pro. No. 23-50145; D.I. 27-32]. At pages **[318]-[374]** is a copy of the JPL Counterclaims, and at pages **[375]-[412]** is a copy of the JPLs Motion to Dismiss.

31. Following this Honourable Court granting the Lift Stay Sanction Order, on 29th March 2023, the JPLs filed the Lift Stay Motion in the Bankruptcy Court. After the Debtors and other parties in interest, including the official committee of unsecured creditors of the

Debtors filed objections and an Ad Hoc Committee of Non-US Customers filed a statement in partial support, the JPLs filed a response on 12th May 2023, in advance of a hearing to consider the Lift Stay Motion and other matters on 17th May 2023. The hearing of the Lift Stay Motion was subsequently adjourned to 8th June 2023. Judge Dorsey ruled on the Lift Stay Motion on 9th June 2023. At pages **[228]-[284]** is a copy of the Lift Stay Motion.

32. On 9th June 2023, Judge Dorsey (i) denied the Lift Stay Motion; and (ii) directed the Debtors and the JOLs to meet and confer on an agreeable process to mediate the disputes and claims existing between them. Judge Dorsey also made clear that until the issue of "who owns which assets" had been resolved between the Debtors and JOLs, no chapter 11 plan proposed by the Debtors could or would be confirmed by the Bankruptcy Court. A transcript of Judge Dorsey's *ex tempore* ruling from the bench on 9th June 2023 is exhibited at pages **[413]-[605]**.

33. On 20th July 2023, the Bankruptcy Court entered the Order, whereby the Bankruptcy Court: (i) denied the Lift Stay Motion for the reasons stated on the record at the 9th June 2023 hearing; (ii) authorized a non-binding mediation process to potentially resolve the disputes and claims between the Debtors and the JPLs; and (iii) appointed the Hon. Judith Fitzgerald (Ret.) to serve as mediator. At pages **[606]-[608]** is a copy of the Order.

34. Ret. Judge Judith Fitzgerald was appointed as mediator and the parties (i.e., the JPLs and Debtors) held introductory calls with the mediator both collectively and individually. The tentative meditation was scheduled for October 2023, which was postponed as the parties were seeking to make progress in relation to settlement discussions. The mediation is now not necessary given the agreement between the parties, subject to the approval of this Honourable Court and the Bankruptcy Court.

35. After the hearing on 9th June 2023 and with the encouragement of Judge Dorsey, the Debtors and JOLs began engaging in good-faith arm's-length negotiations regarding a potential global settlement of all issues outstanding between the parties. Those discussions and various meetings over the course of many months culminated with the entry into the GSA and ancillary agreements.

GSA Key Terms

36. The GSA recites that each Party has an interest in avoiding the uncertainty, delay, cost and expense that is associated with litigation of the disputes between the Parties, including the novel legal, factual and equitable issues raised in connection with the Adversary Proceeding, the Lift Stay Motion, the Cooperation Agreement, the FTX DM Liquidation and the Chapter 11 Cases, generally.

37. Further, the GSA recites, without any admission by either Party, that each Party desires to settle all disputes between them, including the Adversary Proceeding, and expresses to the other Party its support and commitment with respect to the other Party's insolvency and any related or ancillary proceedings.

38. The GSA comprises two stages, an Initial Settlement Effective Date and a Final Settlement Effective Date. The sanction by this Honourable Court of the GSA (and ancillary agreements) and the approval by the Bankruptcy Court are conditions precedent to the Initial Settlement Effective Date. The Final Settlement Effective Date will not occur unless and until a chapter 11 plan of reorganization (which is consistent with the GSA) is confirmed by the Bankruptcy Court and becomes effective. It is particularly noteworthy that in accordance with ***Section 1.01*** of the GSA, the Final Settlement Effective Date will in effect and substance is not triggered unless, among other things, the plan of reorganization is reasonably acceptable to FTX DM.

E. The merits of the GSA

39. In the JOLs' considered view, the GSA is a landmark deal which will pave the way for the return to customers of the proceeds from assets recovered for the insolvent estates much earlier than otherwise would have been the case. As described further below, absent the GSA, it is unlikely that recoveries, after the costs of necessary legal actions, would have been sufficient to make any distribution of any significance to customers and creditors of FTX DM. At pages **[16]-[54]** is a copy of the GSA.

40. The GSA addresses many of the complex cross-border legal and other issues raised following the collapse of the FTX group. It provides for assets across the estates of FTX DM and the Debtors to be pooled for distribution to FTX.com customers in a way that ensures customers, whether they claim in the FTX DM official liquidation or the

Bankruptcy, will receive, at similar times, substantially identical distributions on their claims. The GSA includes important arrangements between FTX DM and the Debtors with respect to the monetisation and distribution of the assets of the FTX Group.

41. For example, both parties have agreed that subject to the approval of both Courts:

(i) FTX DM will take the operational lead in the realisation of real estate and other assets in The Bahamas to maximise recoveries for customers and creditors, together with the pursuit of specific litigation and avoidance actions identified in the GSA.

(ii) The Debtors will take the operational lead in all other realisation and recovery activities in any other jurisdiction including any sale transaction involving the FTX.com exchange and realisation of intellectual property.

(iii) In each case, the parties will cooperate, share information and efficiently utilise the assistance of their respective Courts.

(iv) On 4th January 2024, the JOLs filed a Motion in the Chapter 15 case seeking approval from the Bankruptcy Court, as foreign representatives of FTX DM, of the GSA and related relief. The application is scheduled to be heard on 31st January 2024. At page **[118]-[193]** is a copy of the said Motion.

F. <u>JOLs' commercial reasoning for entering into GSA</u>

42. This section outlines some of the key factors that informed the JOLs' conclusion that approval of the GSA is in the best interests of FTX DM, its creditors and customers.

43. The most significant factors are the delay, legal and other professional costs, and potential risks to creditors and customers of FTX DM in connection with the defence of the Adversary Proceeding and FTX DM's counterclaims which are canvassed at pages **[11]-[12]** of the Third Interim Report. In accordance with the GSA (the relevant section of which is set out below), the Adversary Proceeding will in effect and substance be fully and finally settled between the parties.

44. Due to the complexity and novelty of the issues in dispute (in addition to the various interlocutory applications which will likely be required) there will not be a final determination, inclusive of appeals, relative to the issues in dispute between the parties for many years. There are strong arguments in FTX DM's favour in relation to its defence of the Adversary Proceeding and prosecution of its counterclaims, however, the Debtors have made it clear that they do not agree and there is no certainty of a successful outcome because of the complexity of the law, facts and novelty of the issues. The inherent uncertainties of litigation weigh in favour of this Honourable Court sanctioning the GSA in spite of the strong arguments in FTX DM's favour. It is also of note that the vast majority of the costs in the liquidation of FTX DM to date have been incurred in relation to disputes with the Debtors and their Chapter 11 cases. The JOLs have always had in the forefront of their deliberations the fact that spending very large sums of creditors and customers' monies on litigation with the Debtors which, however strong the arguments, FTX DM might ultimately lose carries with it considerable risks which the implementation of the GSA in accordance with its terms will bring to an end.

45. If the GSA is sanctioned by this Honourable Court resulting in the consensual resolution of the Adversary Proceeding, and all other claims and disputes between FTX DM and the Debtors, the JOLs anticipate that the future costs, fees and expenses of the Official Liquidation will be reduced significantly. Further the two estates and their creditors and customers will have the prospect of a distribution much earlier than if the JOLs had to prosecute its claims and counterclaims against the Debtors.

46. If the GSA is *not* sanctioned by this Honourable Court, FTX DM and the Debtors are very likely to continue in highly acrimonious and protracted litigation until the Bankruptcy Court determines whether the migration of customers occurred and determines the ownership of the assets. As a necessary consequence of continuing to litigate, FTX DM will incur major expenses on litigation for the foreseeable future which, unless FTX DM is successful in the litigation, will reduce the available assets for distribution to creditors and customers. As this Honourable Court is aware, there are limited funds available to FTX DM and the JOLs (in part due to the seizure of the funds frozen by the Department of Justice **("DOJ")** in the amount of $143.2million broken down as follows: (i) Moonstone Bank 50 million USD and (ii) Silvergate Bank 93.2 million USD).

47. It is, therefore, conceivable that if the litigation with the Debtors were to continue the funds available to FTX DM would be diminished possibly to extinction on legal and other professional expenses in the US with no end in sight of the litigation with the Debtors. The JOLs are live to the point that legal fees are expensive in the US and there is rarely, if ever, recovery of legal costs by the successful party. Further, even if there were funds available to make distributions to customers and creditors at the end of the litigation, any prospect of an early distribution would have long since evaporated. In the JOLs' commercial view, given that there is a mutually bargained settlement alternative, expending the necessary resources to advance the litigation would lead to a regrettable state of affairs and wholly detrimental to FTX DM, its creditors and customers.

48. Other equally important factors which support the sanctioning of the GSA include:

a. The evidence as canvassed in the Groth Affidavit is that the assets and liabilities are so commingled across the FTX Group, whose affairs are also inextricably intertwined, that it would be practically impossible (in addition to considerable delay and enormous expense even if such an exercise was practical) to unravel which entities own which assets and which liabilities are owed to which entity.

b. The terms of the GSA represent the best deal that the JOLs have been able to achieve after protracted and difficult negotiations with the Debtors. Given the limited assets presently under the JOLs control any future litigation would likely require the assistance of litigation funding which raises concerns as to costs and legality of any litigation funding arrangement in The Bahamas.

c. The JOLs have negotiated strongly with the Debtors for months and repeatedly pushed back in relation to various proposals that were unacceptable. At this stage the JOLs do not consider that we can achieve any further improvement in the terms that we have managed to negotiate in circumstances where the financial position of FTX DM is presently much weaker than the Debtors.

49. It is, therefore, extremely unlikely that more favourable terms could be achieved beyond those as set out in the GSA.

G. Main provisions of the GSA

50. The legal matrix which empowers this Honourable Court to sanction the GSA will be addressed in the Skeleton Argument lodged in support of this application. This Honourable Court is referred to the table below for the main elements of the GSA.

Terms Effective Upon Initial Settlement Effective Date	
Support **Sections 3.02, 4.02**	In these proceedings, the Debtors will not object to, or take any action contrary to any liquidation of FTX DM proposed by the JOLs that is consistent with the terms of the GSA. In the Chapter 11 Cases, FTX DM and the JOLs will support any plan of reorganization proposed by the Debtors that is consistent with the terms of the GSA.
Opt-In **Section 5.02 (a)**	All customers of FTX.com (other than insiders and certain excluded customers against whom the Debtors have pending or potential claims) will have the opportunity to elect whether to have their claims reconciled and paid in the Bahamian Official Liquidation or in the Chapter 11 Cases, under the elective procedures, which the Parties will finalize and propose to the Courts for prior approval. FTX DM and the Debtors currently anticipate that eligible FTX.com customers will be able to make this election either in a claim form filed in the Bahamian Official Liquidation or in response to Chapter 11 plan ballots distributed by the Debtors.
KYC Procedures **Section 5.08**	Know-Your-Customer Procedures will be implemented in a coordinated manner designed to ensure compliance with applicable law in the United States, The Bahamas, and all other applicable jurisdictions.
Settlement of Preference Actions **Section 5.05**	The Debtors and FTX DM will use commercially reasonable efforts to (i) make the same settlement offer to Dotcom Customers available in the Chapter 11 Cases and, the DM Liquidation and (ii) release the settled Recovery Actions belonging to the estates of the Debtors and FTX DM upon acceptance of the offer.
Loan Agreement – Administrative Expenses **Section 5.06 (a) (i) and (c)**	Pursuant to the terms of the Loan Agreement (subject to the approval of this Court and the US Court), the Debtors will provide FTX DM a loan for $45 million exclusively to pay Administrative Expenses. Certain extraordinary events trigger a mandatory prepayment of the loan. The principal on the loan matures on the earlier of: 18 months; the chapter 11 Plan Effective Date; termination of the GSA; or when the principal automatically becomes due pursuant to the terms of the Loan Agreement.
Third-Party Litigation	The Parties have agreed to a consensual approach with respect to litigation against unaffiliated third parties through Recovery Actions. The right to manage and control the prosecution of Recovery Actions have been amicably

Section 2.02	divided between the Parties. The Parties will cooperate and use commercially reasonable efforts to maximize recoveries from all Recovery Actions.
Bahamas Real Property Section 2.04	Each Party agrees to the joint process set forth in the Properties Exclusive Sales Agency Agreement for the prompt cash sale of real estate owned by Propco in The Bahamas. FTX DM, acting through the JOLs, will take the operational lead in marketing and selling the real estate owned by PropCo.
Realization of Assets Section 2.05 (b)	Each Party shall cooperate and and use commercially reasonable efforts to assist (including by providing any consents or authorizations) the other Party in the prompt realization of assets allocated to the other Party, which includes the release of the DOJ Seized Funds to FTX DM's Estate.
Valuation Section 5.03(d)(ii)	FTX DM will use commercially reasonable efforts to determine the fair market value of digital assets in a manner that is consistent with the valuation methodologies and processes adopted by the Debtors in consultation with FTX DM in the Chapter 11 Cases in order to minimize potential discrepancies in the administration of their respective proceedings. The valuation of digital assets as of the Petition Date will reflect a consensual approach between the Debtors and FTX DM, approved by both Courts.
Terms Effective Upon Final Settlement Effective Date (Chapter 11 Plan Effectiveness)	
Distributions Section 5.07 (b)	For the purposes of making distributions to FTX.com customers, the Debtors and FTX DM will pool assets, and coordinate the establishment of reserves and the timing and amount of distributions, all to ensure that FTX.com customers in both proceedings receive substantially identical relative distributions at substantially identical times. FTX.com customers will not be permitted to file the same claim in both proceedings and will release their claims in the proceeding that is not elected.
Disputed Property Section 2.01 & Exhibit C	The Parties have agreed to a consensual allocation of disputed property between the Debtors and FTX DM, to be vested free and clear of all claims and interests of the other on the Final Settlement Effective Date.
Inter-Estate Funding Section 5.06 (a) (ii)	On any distribution date, the Debtors will determine the distributable amount (reserving for appropriate holdback amounts) for FTX.com customers as a cumulative percentage. To the extent that one estate does not have sufficient assets to fulfil the distributable amount, the other estate will pay cash sufficient to pay the full distributable amount owed to customers.

PropCo Chapter 11 Plan Section 2.04 (b)	PropCo will be treated separately under the Chapter 11 Plan and not be substantively consolidated with any other Debtor. FTX DM will have a claim against PropCo, stipulated and Allowed as an unsecured, unsubordinated, pre-petition Claim in the amount of $256,291,221.47; provided that the Stipulated PropCo Claim will be subordinated to the PropCo Ordinary Course Claims.
Releases Section 9	The Parties will fully release each other from, against, and in respect of any and all present and future Claims connected to the GSA, save as otherwise provided in the GSA.
Stay of Adversary Proceeding Sections 7.01 & 7.02	In full and final settlement and satisfaction of the Adversary Proceeding, the Adversary Proceeding Parties agree to settle on the Final Settlement Effective Date (a) all Claims and Causes of Action between the Parties that are asserted or could have been asserted in the Adversary Proceeding and all pending litigation between the Parties on the terms set forth in the GSA, (b) all intercompany Claims between the Parties, except as provided otherwise in the GSA, and (c) any potential objection either Party may have to such settlement on such terms.
Other Matters	
Treatment of FTX DM Customer Claims Section 5.03 (d)	Customers of FTX DM will be paid distributions based on a valuation of cash or Digital Assets as of 11th November 2022 provided that claims relating to FTT tokens are to be valued at zero.
FTT Interests Section 5.03 (d) (ii)	FTT Interests in FTX DM and the Debtors will be treated as equity and will not receive any recovery.

H. Intercompany Claims

51. As a part of the GSA, all intercompany claims between FTX DM and the Debtors will be released. This Court will recall as canvassed in the Fifteenth Affidavit of Kevin Cambridge filed 10th November 2023 that on 30 June 2023 the JPLs, in their capacity as the appointed foreign representatives in FTX DM's Chapter 15 case, filed electronic proofs of claim against the U.S. Debtors in aggregate totalling USD 9,150,790,714.84 plus contingent and unliquidated amounts.

I. Departure from the Pari Passu Rule

52. The JOLs invite this Honourable Court to note that the GSA anticipates a distinction between: (i) "DM Non-Customer Claims"; (ii) "DM Customer Entitlement Claims"; and (iii) "DM Excess Claims". Each of these claims will be an unsecured claim against FTX DM, yet

the three different classes of claim may recover in different proportions (if at all). Therefore, the GSA contemplates a departure from the *pari passu* rule.

53. The jurisdiction of this Honourable Court to sanction a compromise agreement notwithstanding that it leads to an outcome for creditors which departs from the *pari passu* outcome will be addressed in the Skeleton Argument in support of this application. The important factors which should be taken into account by the Court when considering whether to sanction a departure from the *pari passu* rule are the same factors as set out in this Affidavit in support of sanction of the GSA.

J. Realization of Assets

54. In accordance with Clause 2.05 of the GSA, each Party shall cooperate and use commercially reasonable efforts to assist (including by providing any consents or authorizations) the other Party in the prompt realization of assets allocated to the other Party under Section 2.01, including, with respect to the transfer of the Disputed Digital Assets, the release of the DOJ Seized Funds to FTX DM's estate, and in monetizing the Bahamas Properties. FTX DM, acting by its JOLs, is to be responsible for the "Stipulated DM Property" which means the assets, interests, rights or property, as the case may be, listed in Exhibit C to the GSA. On the Final Settlement Effective Date, the Stipulated DM Property will be vested in FTX DM free and clear of all claims and interests.

L. Valuation of DM Customer Entitlement Claims

55. In accordance with ***Section 5.03 (d) (ii)***, FTX DM is required to calculate the amount of a DM Customer Entitlement Claim to be equal *"to the fair market value of cash or Digital Assets on account at the FTX.com Exchange as of November 11, 2022; provided that Claims relating to the FTT token shall be valued at zero and treated as DM Excess Claims."* Further, *"FTX DM shall use commercially reasonable efforts to determine the fair market value of Digital Assets in a manner that is consistent with the valuation methodologies and processes adopted by the Debtors in consultation with FTX DM in the Chapter 11 Cases."*

56. As reflected in the Debtors' Plan of Reorganization filed on 16th December 2023 and found at pages **[613]-[691]**, the Debtors propose to value the assets as of 11th November 2022.

57. The 11th November 2022 valuation date creates parity of treatment between both estates vis-à-vis the valuation of claims. However, this date will constitute a departure from the usual position in a Bahamas official liquidation where the valuation date is the date of the winding up order. A justification for the 11th November 2022 date for the DM Liquidation is the fact that the official liquidation commenced when the SCB presented the winding up petition on 10th November 2022 and FTX DM was placed into provisional liquidation. The JOLs are in the process of engaging a valuer for the digital assets and will seek a hearing date for valuations of the digital assets or alternatively to seek to adopt those valuations in the US proceedings which will be held on 31st January 2024.

58. Under the GSA the JOLs have agreed that FTT tokens will have a value of nil. As with a number of the settlement terms, the valuation of FTT at nil was offered on a 'take it or leave it' basis. However, the JOLs agree with the reasoning that FTT tokens can in fact be regarded as sufficiently equivalent to equity in the exchange and that on the collapse of the FTX Group FTT lost all value. Even if there is a surplus, the only way in which FTT could realistically have value, I believe, is if the platform continued to exist and FTT continued to have the same role as a token minted by the exchange.

59. The equity-like nature of FTT was, as I understand it, simply due to the market's expectation that if the exchange did well and grew considerably then other people (potential purchasers from existing FTT holders) would think that FTT was worth holding because of *their own* expectation that yet further people in the future would think that FTT was worth holding. So there is no intrinsic value to FTT at all (unlike the equity), other than any trading (etc) discounts that might be offered by a functional FTX exchange to holders of FTT. Without waiving legal privilege, the JOLs have taken legal advice which is consistent with the foregoing conclusions.

60. Ultimately, as the GSA pools the assets of the estates, the goal is to achieve consistency between both estates relative to the valuation date (and valuation methodology of digital assets) in order to minimize potential discrepancies in the administration of the respective proceedings.

M. Digital Assets on the International Platform

61. ***Section 5.03 (d) (v)*** of the GSA provides that,

> *"In the event that the Debtors agree with the FTX.com Exchange*

Assets Buyer to offer holders of FTX.com Customer Entitlement Claims an opportunity to trade their claims or receive their distributions on a digital currency exchange operated by the FTX.com Exchange Assets Buyer, FTX DM shall, at the request of the Debtors and to the extent permitted under applicable Law, offer the same opportunity to holders of DM Customer Entitlement Claims on the same terms and conditions; provided that, notwithstanding anything to the contrary in this Agreement, to the extent that FTX DM is not permitted under applicable Law to offer such opportunity, all holders of FTX.com Customer Entitlement Claims that elect to trade their claims or receive their distributions on such digital currency exchange shall not be eligible to exercise the Opt-in Election."

62. Section 5.03(d)(v) is a novel provision which anticipates the possibility of the FTX.com Exchange being monetised by being sold on the open market. In that event the GSA provides for the possibility of customers receiving their distributions through the sold FTX.com Exchange. If a sale does eventuate the JOLs do not anticipate that there will be a problem if customers wish to receive distributions in this manner.

N. SCB Transfer

63. ***Section 2.05 (a)*** of the GSA provides that,

"FTX DM shall use commercially reasonable efforts to obtain the return of the Digital Assets held by the SCB. Upon such return, FTX DM shall transfer all such Digital Assets to the Debtors."

64. As this Honourable Court is aware, shortly after the winding up petition was presented in this Honourable Court by the SCB, the SCB took control of a quantity of digital assets as a means of preventing unauthorised withdrawals by unknown persons. The Bankruptcy Court has already authorized a series of thorough procedures proposed by the Debtors for the monetization of digital assets. Accordingly, as part of the compromises contained in the GSA, FTX DM, acting by the JOLs, has agreed to seek the return of the digital assets currently held by the SCB and then transfer them to the Debtors. The JOLs have liaised with the SCB in connection with this term of the GSA and, as at the date of this Affidavit, my understanding is that the SCB are content to transfer the digital assets to FTX DM to be dealt with on the terms of the GSA and that the SCB intends to seek an order from this Honourable Court to that effect. At pages **[648]-[650]** is a copy of the Order of Klein J filed 14th November 2022.

O. Bar Date to Claims

65. In accordance with Section 5.01 of the GSA, it was agreed that FTX DM *"shall establish May 15, 2024, or such other date as the Parties may reasonably agree, as a bar date for Claims against FTX DM. Except as required under applicable Law, FTX DM shall not seek to move or alter the Bahamas Bar Date without the prior written consent of the Debtors, not to be unreasonably withheld."*

66. As set out at [1.2] of the Third Interim Report, the basis for the Bar Date is to allow the two estates (i.e., FTX DM and the Debtors) to move in tandem vis-à-vis distributions to customers and creditors. The strict bar date gives certainty and expedition to distributions. However, the strict Bar Date does mean that creditors or customers who lodge proofs of debt after that date may not be permitted to receive distributions subsequent to the bar date as contemplated by O.18, r.6(2)(b) of the Liquidation Rules 2012. This slight departure from the rules will be addressed in the JOLs' Skeleton Argument in support of sanction. At this stage the Court is invited to note that if a strict Bar Date is not imposed there would be an undesirable risk of distributions being made at different times across the different estates which is likely to create unwelcome confusion among creditors and customers.

67. This is made clear by Section 5.07 Distributions of the GSA which provides *"(a) The Debtors shall make distributions to holders of Trading Customer Entitlement Claims and other creditor Claims pursuant to the terms of the Acceptable Plan and in accordance with this Agreement. FTX DM shall make distributions to holders of DM Customer Entitlement Claims and other creditor Claims in the DM Liquidation in accordance with this Agreement. The Parties shall use commercially reasonable efforts to coordinate record dates and distributions, align procedures and policies, minimize confusion among Claims holders, and minimize administrative costs and expenses."*

68. Although, for the reasons explained above, the GSA provides for a fixed Bar Date, the effect of Section 5.01 is that FTX DM might be able to seek to alter the Bar Date with the prior written consent of the Debtors. The Debtors have a legitimate concern to have a final Bar Date in order for the Plan of reorganization in the Chapter 11 proceedings to be implemented. Nevertheless, it is conceivable that if a creditor or customer were to lodge a proof in the official liquidation after the Bahamas Bar Date the JOLs might be able to persuade the Debtors to provide written consent permitting that creditor or customer to receive any future distributions made after the date of the proof. There is, of course, no guarantee that the Debtors will respond positively to such a request. In addition, Section

5.01 does anticipate the possibility that this Honourable Court might conclude that O.18, r.6(2)(b) cannot be disapplied by a single Bar Date, although the JOLs will be inviting the Court to conclude that in the special circumstances of this case it can be. In order to ensure that creditors and customers do not miss the Bar Date the JOLs will make broad and sustained efforts in the period prior to 15th May 2024 to warn creditors and customers wishing to receive distributions in the official liquidation of FTX DM of the importance and effect of the Bar Date by placing advertisements in the main newspapers and journals and posting warnings on the PWC creditor/customer Claims Portal where some 60,933 potential creditors/customers have registered their claims. Accordingly, the risk of any creditor or customer being prejudiced by the imposition of the Bar Date is small.

P. DM Non-Customer Claims

69. As referred to previously one of the substantial issues in the FTX DM Liquidation is whether, and if so on what terms, fiat and digital currency transferred by customers to the FTX.com platform were held on trust by FTX DM. The consequence of the GSA is that this issue will not now be determined. However, in recognition of the fact that customers might well be in a different category from ordinary trade, governmental and other unsecured creditors, the GSA provides at Section 5.03(b) and (c) for creditors proving in the DM Liquidation (other than customers) to be paid from a specific and segregated account that will be funded by a sum of $15 million to be provided by the Debtors. Presently the JOLs consider that this amount should be sufficient to satisfy all the ordinary creditors of FTX DM. Another justification for the differential treatment of non-customers was the concern of the JOLs that the Debtors would be reluctant to provide any funding for non-customers at all or for FTX DM to pay a distribution to non-customers from assets in their hands. Such an outcome would have been very unfair and was not one to which the JPLs could agree. Nevertheless, the JPLs appreciated that unless a compromise could be reached FTX DM would face years of very hostile and expensive litigation with the risk that non-customers as well as customers might ultimately receive nothing because FTX DM's assets had all been spent on legal and other professional fees in litigation with the Debtors. Eventually, the Debtors agreed to the creation of the DM Non-Customer Claims Pool to be funded by $15 million so that distributions could be made to all non-customer creditors proving in the FTX DM Liquidation. Non-customer creditors will not be able to elect whether to claim against the Debtors or in the FTX DM Liquidation. They will only be able to claim in the

DM Liquidation. Under this arrangement non-customer creditors are entitled to their pro rata share of such pool, up to the amount of their admitted proof.

Q. International Protocol and Joint Hearing

70. Pursuant to Practice Direction No.14 of 2023 issued by the Chief Justice, Sir Ian Winder and dated 19th December 2023, the Judicial Insolvency Network's Guidelines for Communications and Cooperation between Courts in Cross-Border Insolvency Matters ("the JIN Guidelines") were approved for use in The Bahamas. The Guidelines primarily cover the procedural rules that may be adopted and applied in particular cross-border insolvency or restructuring proceedings for regulating the manner of communication between the courts involved, the appearance of counsel in each court, notification to parties in parallel proceedings, the acceptance as authentic of official documents or others made in the foreign jurisdiction or court and joint hearings. Without a practice direction broadly in line with Practice Direction No. 14 of 2023, the implementation of the GSA would result in any disputes being resolved solely by the Bankruptcy Court without any input from this Honourable Court.

71. In accordance with ***Section 5.03 (iii)*** of the GSA, the Debtors shall, at the request of FTX DM, take all commercially reasonable actions as may be reasonably appropriate or necessary to request that the Bankruptcy Court conduct one or more Joint Claims Hearings with the Bahamian Court. It is contemplated that the Joint Claims Hearing (if necessary) will provide an opportunity for both this Honourable Court and the Bankruptcy Court in accordance with the JIN Guidelines to determine whether a DM Customer Entitlement Claim (or portion thereof) constitutes an Eligible DM Customer Entitlement Claim if the Debtors disagree with and object to the JOLs' wish to admit a particular DM Customer Entitlement Claim. It is contemplated that if a Joint Claims Hearing becomes necessary, it would resolve the issue as to whether a DM Customer Entitlement Claim (or portion thereof) constitutes an Eligible DM Customer Entitlement Claim. This arrangement does give the Debtors some control over whether a creditor or customer can receive distributions from the FTX DM estate. However, the safeguard is a pool of US $75 million provided by the Debtors to assist in paying all disputed Eligible DM Customer Entitlement Claims and, if all attempts to reach a consensual resolution fail, the prospect of a Joint Claims Hearing.

72. As stated above, as part of the GSA, FTX DM will receive funds from the Debtors to enable customers opting to prove in the FTX DM liquidation to receive the same level of distribution as if they had claimed in the Chapter 11 cases. However, certain Ineligible DM Customer Entitlement Claims (as defined by the GSA) that the JOLS decided to admit into the DM liquidation but which the Debtors disputed will not be funded by the Debtors. Insofar as those claims exceed the $75 million pool, there will be a dilution of the FTX DM estate and the amounts that the FTX DM customers will receive compared to those that claim through the Chapter 11 process. Without the GSA, as described above, there was an appreciable risk that FTX DM would have been left with scarce resources with which to make any distributions to those wishing to prove in The Bahamas leaving customers with no option but to claim in the Bankruptcy Court in the US. Ordinary creditors would have had to prove against FTX DM in The Bahamas whose resources would have been heavily diminished. The importance of the continued involvement of this Honourable Court on the eligibility of a DM Customer Entitlement Claim has been appropriately and rightly acknowledged in the GSA.

73. The eligibility of a claim is based on the US criteria with the first step being that the claim should match the claim in the Chapter 11 Debtors Schedules of Claims. The JOLs have been advised by PwC that, based upon their processes for verification of the Schedules and the methodology used by the Debtors, the Schedules appear to be accurate. Insofar as such claims are not accurate any challenge which would be acceptable in the Chapter 11 proceedings by a claimant may also be made by a FTX DM customer. It is only challenges which are outside of the US criteria which will be designated Ineligible DM Customer Entitlement Claims and if accepted by the JOLs will result in some dilution of funds available in the FTX DM estate insofar as the total amount of those claims exceed the $75million pool.

74. Further, as described above, the publication of Practice Direction No.14 of 2023 means that this Honourable Court and the Bankruptcy Court (which has adopted the JIN Guidelines through approval of the GSA, and also through codification of the rule in Local Rule 9029-2 of the Local Rules for the Bankruptcy Court) may hold a joint hearing on any other issue that arises within the context of the GSA and the ancillary agreements. This accords with the overarching objective of the JIN Guidelines, which is to improve, in the interests of all stakeholders, the efficiency and effectiveness of cross-border insolvency and restructuring proceedings involving more than one jurisdiction by enhancing coordination and

cooperation amongst the courts under whose supervision such proceedings are being conducted.

75. Exhibit D to the GSA sets out the Dispute Resolution protocol introduced by Section 10.07 of the GSA. Exhibit D provides that if a dispute arises between the parties, either party may give written notice to the other party of its intent to seek judicial intervention to resolve the dispute **("the Judicial Intervention Notice").** Following the delivery of a Judicial Intervention Notice, the parties are required to negotiate in good faith a procedure to resolve the dispute that involves the concurrent jurisdiction of this Honourable Court and Bankruptcy Court and is consistent with the JIN Guidelines and applicable law, *See page **[53]***.

R. Excluded Parties

76. Under the GSA, "Excluded Party" means any (a) Control Person, Insider or Affiliate of a Control Person or Insider; (b) holder or subsequent transferee of such holder of a Claim against any Debtor other than a FTX.com Customer Entitlement Claim; or (c) Person or any initial or subsequent transferee of such Person against whom the Debtors determine they have any Cause of Action (other than for withdrawals of cash or Digital Assets from the FTX.com Exchange) that are identified on a schedule to be provided by the Debtors to FTX DM in accordance with Section 5.02(b). As set out above, all customers of FTX.com (other than Excluded Parties) will have the opportunity to elect whether to have their claims reconciled and paid in the DM Liquidation or in the Chapter 11 Cases, under the elective procedures, which the Parties will finalize and propose to the Courts for prior approval. An *"Excluded Party"* is defined at Section 1.01 of the GSA.

77. The Excluded Parties list contains those persons against whom the Chapter 11 Debtors will bring proceedings on behalf of both estates. Persons on such list are prohibited from making claims in the FTX DM liquidation.

S. Exclusion of Claims

78. As set out at Section 5.02 (e) of the GSA, *"no holder of a DM Excess Claim shall receive any distributions on account of its DM Excess Claim."* A DM Excess Claim *"means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, rule or regulation, common law or otherwise) of a Dotcom Customer arising out of or related*

to accounts or positions on the FTX.com Exchange, other than a DM Customer Entitlement Claim."

79. A *"Claim"* for the purpose of the GSA and insofar as it relates to FTX DM has the meaning ascribed to it in ***Section 235*** of the ***Companies Act.***

80. The exclusion of a DM Excess Claim is to ensure that a customer claiming in the DM liquidation will only receive distributions calculated by reference to the value of cash or digital assets that had been credited to the customer's account on or before 11th November 2022. Accordingly, there will be no distributions on other types of claim such as claims for loss of profit, breach of trust, fraud, conspiracy or otherwise. Distributions will be limited to customers' actual net losses of fiat or digital currency on the platform. The rationale for the exclusion of a DM Excess Claim is that if there were such claims, the natural inference is that they should be available to all customers proving in the FTX DM Liquidation. It would make no sense, therefore, to entertain and incur the cost of adjudicating on claims of some customers who might opportunistically make such claims. The JOLs believe that it was in the best interests of FTX DM to agree with the Debtors to restrict all customers, whether claiming in the DM Liquidation or in the Bankruptcy, actual easily quantifiable losses on the FTX.com International Platform.

T. Properties Exclusive Sales Agency Agreement

81. The agreements that are ancillary to the GSA are:

81.1. The Properties Exclusive Sales Agency Agreement dated 19th December 2023 which is referred to at Section 2.04 of the GSA and (along with the PropCo Sales Procedures) provides for a joint process for realising the properties owned by FTX Property Holdings Ltd. **("Propco")** in The Bahamas and which were funded by monies provided by FTX DM.

81.2. The Advance DM Loan Agreement dated 19th December 2023 pursuant to which FTX Trading has agreed to advance US$45M to FTX DM to fund the expenses of FTX DM's official liquidation. The key terms of the Loan Agreement are set out below at [96].

82. The aforementioned ancillary agreements are referred to in the GSA and attached at pages **[55] – [84]**.

83. The intention of the Properties Exclusive Sales Agency Agreement is as set out in the recitals to the agreement to *"provide for the prompt cash sale of the real estate owned by PropCo in The Bahamas free and clear of all claims and interests."*

84. The JOLs are to take the operational lead in marketing and selling the real estate owned by PropCo, *see Article 3.02*. The Properties Exclusive Sales Agency Agreement is advantageous for FTX DM because it gives control of marketing and sales of Propco's property to the JOLs who have a greater familiarity with the real estate market in The Bahamas than the Debtors. Further, as the GSA provides for FTX DM to be paid in excess of $256m from the sales of Propco's properties it is reassuring that FTX DM has a large measure of control over the way the properties are marketed and the selling prices.

85. As stated at [1.5] of the Third Interim Report, the JPLs identified 41 properties with a total acquisition price of $256m acquired in the name of PropCo or in the name of individual employees of FTX DM. PropCo did not operate a bank account and based on a review of the books and records, the JPLs concluded that all property purchases, operating and maintenance costs were financed by FTX DM prior to the presentation by SCB of the winding up Petition. The JPLs *inter alia* took steps to preserve and protect the properties as relevant (e.g., by way of insurance renewals, repairs, and liaising with One Cable Beach to place 4 properties into the rental pool to cover ongoing holding costs) and the JOLs have continued these activities since their appointment. These costs to date, have been met at the expense of FTX DM's estate, in line with the pre-bankruptcy position, on the basis that FTX DM expected to be indemnified out of the sale proceeds.

86. In the context of FTX DM having funded the purchase of the 41 properties, the JPLs concluded that the properties were either held on trust by PropCo for FTX DM or, at the very least, PropCo was a very substantial debtor of FTX DM. The Debtors strongly objected to this conclusion and as PropCo was in Chapter 11 in the Bankruptcy Court with the benefit of an automatic stay, the only place where the contested issues could be resolved was in the Adversary Proceeding in the Bankruptcy Court. The GSA avoids what would otherwise have been protracted legal argument over the ownership and liabilities associated with the 41 properties. As a result of the GSA the properties will be sold (subject to approval of both

Courts) promptly in The Bahamas for the ultimate benefit of the respective estates. It is expected that the claim of FTX DM for approximately $256 million (as a result of FTX DM providing the funding for the purchase of the properties) will be satisfied to a great extent from the sale of these properties. Again, this will hopefully facilitate the prospect of an early distribution which would not have been likely or feasible without the GSA.

U. Completion of Goldwynn Contracts and Conveyance to FTX DM

87. On 5th December 2023, the JOLs received a Notice to Complete from Messrs. Graham Thompson in their capacity as attorneys for Wynn Development Ltd. **("Wynn Development")** relative to seven (7) Sales Agreements dated 22nd February 2022 and (1) Sales Agreement dated 4th March 2022 **("the Goldwynn Sales Agreements")** between Wynn Development and Propco and Weiyi Xia (i.e., an employee of FTX DM) respectively relating to the construction and sale of eight condominium units **("the Goldwynn Units")** in the 'Residences at Goldwynn' development project at Cable Beach, Nassau, The Bahamas. At pages **[100]-[111]** is a copy of the Notice to Complete.

88. The Goldwynn Sales Agreements related to: Units 118, 228, 232, 235, 337, 434 and 436 as between Wynn Development and Propco **("the PropCo Goldwynn Units")**, and Unit 113 as between Weiyi Xia and Wynn Development **("the Xia Goldwynn Unit")** (collectively referred to as "the Units").

89. The JOLs and Debtors were keen to avoid the forfeiture of the sums paid towards the purchase of the Units i.e. the sum of US$7,718,277. In order to facilitate the closing of the purchase of the Goldwynn Units (and in furtherance of the GSA) (i) a Deed of Assignment dated 19th December 2023 was entered into between FTX DM (acting by the JOLs) and PropCo whereby PropCo assigned the sales agreements vis-à-vis the Goldwynn Units to FTX DM. Thereafter, FTX DM, acting by the JOLs, completed the transactions relative to the PropCo Goldwynn Units. The PropCo Goldwynn Units have since been conveyed to FTX DM, which FTX DM (acting through the JOLs) holds in accordance with the terms of the Deed of Assignment and (ii) Declaration of Trust dated 19th December 2023. At pages **[85]-[99]** is a copy of the Deed of Assignment and Declaration of Trust.

90. The effect of the Deed of Assignment and Declaration of Trust is that the realization of the Goldwynn Units will be dealt with under the terms of the GSA in accordance with the terms of the Exclusive Sales Agency Agreement.

91. The JOLs also seek the sanction of the Court for having caused FTX DM to enter into these agreements.

92. Further, FTX DM completed the transaction contemplated by the Sales Agreement entered into between Weiyi Xia and Wynn Development in relation to the Xia Goldwynn Unit and entered into an Indemnity Agreement dated 18th December 2023 with Wynn Development relative to same.

93. It was necessary for FTX DM to enter into the Indemnity Agreement as a condition of Wynn Development completing the sale of the Xia Goldwynn Unit. Wynn Development wished to be indemnified from any adverse costs, damages, or expenses that may be incurred in the event that proceedings are commenced by Weiyi Xia as a result of the sale and purchase and completion of the Xia Goldwynn Unit to FTX DM.

94. In summary, the JOLs caused FTX DM to execute the Indemnity Agreement on the basis that among other things, FTX DM may have a proprietary traceable interest in the Xia Goldwynn Unit in that FTX DM made payments on behalf of Weiyi Xia in the amount of $1,100,353 ("the Instalment Payments") to Wynn Development. The books and records of FTX DM show that FTX DM provided the funding for the Instalment Payments for the Xia Goldwynn Unit similarly to the other properties purchased in The Bahamas by PropCo and/or employees of FTX DM. At pages **[112]-[117]** is a copy of the Indemnity Agreement. If Weiyi Xia does seek to challenge the conveyance to FTX DM of the Xia Goldwynn Unit, FTX DM will wish to protect the funds paid by FTX DM and resist the challenge. If Wynn Development was drawn into the dispute, it wanted to make sure that it was indemnified for any costs.

V. The Loan Agreement

95. As set out above, FTX Trading has agreed to advance US$45M to FTX DM to fund the expenses of the FTX DM's official liquidation until realisations can be made from assets designated by the GSA for recovery by the JOLs. The key terms of the Loan Agreement are:

95.1. Principal Amount: $45 million. *See Article II of the Loan Agreement*

95.2. Interest: 7% per annum, *See Article III of the Loan Agreement*

95.3. Use of Proceeds: FTX DM will apply the proceeds of the Loan Agreement solely to pay administrative expenses incurred or to be incurred in the course of the DM Liquidation., *See Article II of the Loan Agreement*

95.4. Repayment: The principal amount of the Loan Agreement outstanding and accrued interest thereon will be due and payable on the date that is the earliest of: (i) June 19, 2025; (ii) the date on which the Debtors' reorganization plan becomes effective; (iii) the date on which the GSA is terminated; and (iv) the date on which the principal amount of the Loan outstanding has been declared, or has become, due and payable pursuant to the Loan Agreement. *See Section 4.01 of the Loan Agreement*

95.5. Automatic Set-off Upon Plan Effectiveness: If the Debtors' reorganization plan becomes effective, FTX DM's obligation to repay the Loan will be automatically satisfied by set-off and reduction against any amount otherwise due to FTX DM from the Debtors under the GSA.

95.6. Court Approval Is a Condition Precedent: FTX Trading's obligation to make the Loan is subject to approval of the Loan Agreement by this Honourable Court and the Bankruptcy Court, *See Section* 2.03.

95.7. Dispute Resolution: Any dispute between the parties arising from the Loan Agreement will be resolved in accordance with the Dispute Resolution protocol as set out in the GSA, *See Section 7.06.*

W. Directions Application

96. As set out at [15] of my draft fifth affidavit (found at Exhibit **"BCS-2"** of my fourth affidavit filed on 15th March 2023) the Directions Application identified a number of complex and difficult factual and legal issues as to whether customers were customers of FTX DM or FTX Trading and/or whether assets in the hands of FTX DM were held on trust and, if so, for whom. At pages **[199]-[227]** is a copy of my draft fifth affidavit.

97. In light of the favourable terms achieved *via* the GSA as set out above, the JOLs consider it in the best interests of the FTX DM Estate not to proceed with the Directions Application even if that were possible given the automatic stay and Judge Dorsey's ruling in the Lift Stay Motion. That is, the JOLs do not wish to embark on what may result in a pyrrhic victory for customers when a better, more efficient, and more practical alternative is available. The JOLs consider the GSA to be that alternative which allows both the FTX DM and Debtors' estates to focus on *inter alia* recovery actions and distributions to customers without regard to ownership or the company with whom the customer contracted.

98. Accordingly, the GSA Approval Application seeks liberty to withdraw the Directions Application as it is no longer required.

X. Migration Issue

99. The JOLs expressed the view in the Third Interim Report at [1.2] that migration to FTX DM of the customers was more likely than not to have been effective. This view was reached after considering the documents in possession of FTX DM and taking careful advice from the JOLs' lawyers over many months. The Debtors strongly disagreed with the JOLs' views on migration. Without the GSA this issue would have needed to be judicially determined. In light of the continuing automatic stay in the Debtors' Chapter 11 cases and the JPLs' unsuccessful Lift Stay Motion in the Bankruptcy Court, the migration issue could only have been determined in the Adversary Proceeding in the Bankruptcy Court.

100. Notwithstanding the JOLs' view that migration likely took place they were unable to be certain about it and it is, likewise, by no means certain that the Bankruptcy Court would have concluded that migration took place particularly against a backdrop of the very strong objections of the Debtors. It is also unclear whether it would have been possible to persuade the Bankruptcy Court to adjudicate on this issue as a preliminary issue or even whether an early favourable adjudication would have been of benefit to FTX DM given the substantial number of other issues in the Adversary Proceeding including allegations by the Debtors against FTX DM of fraud. Further, even if the migration issue was decided in FTX DM's favour there would remain the fact, as the JOLs have now established to their satisfaction, that the assets and liabilities of FTX DM and the Debtors have been inextricably commingled without separation of assets inter-FTX Group or as trust assets. Unravelling the assets and liabilities would have been an extremely difficult, if not, impossible task. As

already explained above, these issues will not need to be determined (with all the attendant costs, uncertainties and delay avoided) if the entry into the GSA is sanctioned.

Y. Trust issues in detail

101. Whether the digital assets of customers are held on trust was a key question during the provisional liquidation of FTX DM and the Directions Application was formulated in order to determine that question. However, as explained above the unsuccessful Lift Stay Motion had the consequence that the Directions Application could not proceed in this Honourable Court as it would have placed FTX DM and the JOLs in breach of the Debtors' automatic stay as found by Judge Dorsey in the Bankruptcy Court.

102. I refer to my draft Fifth Affidavit which explains the legal basis for digital currency and possibly also fiat that was transferred to and held on the FTX.com International Platform being held on trust by FTX DM. I also invite this Honourable Court to note that the Debtors dispute any proposition that customers' fiat or digital currency is held on trust by the Debtors or FTX DM.

103. The Debtors have now given the JOLs access to a substantial quantity of the books and records in the possession of the Debtors. As a consequence it is now apparent, as demonstrated by the Groth Affidavit, that even if the digital currency and fiat transferred to and held on the FTX.com International Platform was held on trust for customers, it would be impossible for FTX DM or its customers to trace and follow their own digital currency or fiat into the assets of the Debtors or FTX DM. Accordingly, customers only have claims for breach of trust (not claims for return of their property which cannot be traced) which result in unsecured claims against FTX DM. Theoretically, those unsecured claims could be for more than the value of fiat and digital currency as of 11th November 2022 but, as explained above, the GSA does not allow claims for any more than the value of fiat and digital currency held on the FTX.com International Platform when the FTX Group collapsed. However, as all customers will be treated the same under the terms of the GSA whether they regard themselves as having unsecured debts or trust claims and given the tracing and following problems demonstrated by the Groth Affidavit, the JOLs have concluded that it was in the best interests of customers whether they have trust claims or not for FTX DM to agree to the GSA.

104. There is another possible trust analysis, namely, that the trust was a pooled trust (not individual trusts for individual customers) for the benefit of all customers of all the fiat and digital currency transferred by customers to the FTX.com International Platform. Again, by reason of the commingling of the fiat and digital currencies across the estates of FTX DM and the Debtors, the JOLs have concluded that it is unlikely to be possible to trace the pool into those assets. Moreover, as already explained, the Debtors reject the trust analysis and are determined to promote plans within their Chapter 11 cases that ignore any trust analysis. Thus, absent the GSA, it would be necessary to litigate the trust issue with the Debtors in the Bankruptcy Court with no certain outcome. Further, if a pooled trust is the right analysis, customers receiving distributions based on the value of their fiat and digital currency as at 11 November 2022 are in no worse position than if a pooled trust was found to exist and the trust assets were traceable. The same level of distributions would be made to all customers in both scenarios.

Z. Pooling of assets with a separate estate

105. The GSA contemplates pooling assets and some liabilities (without regard to ownership), including significant assets whose ownership has been disputed between FTX DM and the Debtors for the purpose of making equitable distributions to FTX.com customers.

106. The JOLs consider that pooling the assets of FTX DM and the Debtors will substantially and tangibly benefit the FTX DM estate and customers and creditors. Pooling of assets will avoid costs and delay to the administration and distribution of the FTX DM estate in trying to untangle the assets and liabilities of the estates of FTX DM and the Debtors, a task which might not even be possible. It will also mitigate the very substantial administration costs that would otherwise arise.

107. It is the JOLs' view that the affairs of FTX DM and the Debtors are so entangled and mixed up that a pooling of the assets of the respective estates (without regard to ownership) and enabling customers and creditors to elect to receive dividends either in The Bahamas or the United States is the most sensible and practical means to resolve the issues in dispute between the parties and maximise recoveries.

108. The Groth Affidavit confirms that it would be a herculean and nigh impossible task to reconstruct the books and records of FTX DM so as to identify with any accuracy the assets of FTX DM. Further to the extent that any of the assets were found to have been held on

trust by FTX DM, the Groth Affidavit confirms the impossibility of tracing those assets for the benefit of individual customers. That is, the lack of financial records and commingling of assets make it impossible for customers to trace assets or the JOLs to trace assets belonging to FTX DM or its customers. Therefore, no other practicable or feasible option exists except for a plan which is based on distribution of assets via a pooling mechanism.

109. A consensual pooling and distribution process which allows estates to make distributions to customers in a dual process whereby all customers receive the same distribution irrespective of whether "the pool" is an asset of FTX DM or a trust asset is the most logical path forward. Importantly it will considerably shorten the timeline by which customers are likely to start receiving distributions and by virtue of access to the assets held by the Debtors will substantially increase the return to customers and creditors.

110. The JOLs consider that these considerations must be balanced against the overriding objective of maximising assets available for distribution to customers and creditors. By pooling the assets of FTX DM and the Debtors and eliminating litigation expenses the total assets of the FTX Group will be maximised to the benefit of FTX's customers wherever they decide to claim. At the same time creditors of FTX DM who are not customers will have right to claim against fund of US$15 million in the Bahamas which is to be set aside solely for the benefit of such creditors.

AA. Directions under the Trustee Act 1978

111. This Honourable Court will note that the GSA Approval Application also seeks directions under the Trustee Act 1998. The reason for this is that the Court is to be invited to give directions to FTX DM, acting by its JOLs, that in so far as assets may have been held on trust for customers of FTX DM, to distribute such assets pursuant to the terms of the GSA to customers who elect to prove in the official liquidation of FTX DM.

112. The directions sought are protective ones in the very unlikely event that assets might have been held on trust that could have been traced, although for the reasons set out above, traceability would appear to be impossible.

113. The relief sought under the Trustee Act 1998 also includes an order pursuant to section 73, relieving the JOLs and FTX DM from any personal liability insofar as the JOLs have caused

FTX DM to commit any breach of trust in causing FTX DM to enter into the GSA and/or making distributions to customers who elect to prove in the official liquidation of FTX DM on the ground that they have at all times acted honestly and reasonably and ought fairly to be excused for any breach of trust that they have committed or caused FTX DM to commit in connection with the entry into the GSA or making distributions to customers in accordance with the GSA.

BB. Customers and Creditors of FTX DM

114. The potential customers and creditors of FTX DM with whom the JOLs have been able to discuss the GSA are supportive of the JOLs entering into the GSA. The JOLs also seek an extension to the statutory ninety (90) day deadline to hold the First Creditors Meeting due to the fact that the sanction application will be heard on the 22nd January 2024 and it is only after this application has been determined that the JOLs will be able to circulate forms for proofs of debt that will include the option for customers to elect to prove their claim in the FTX DM official liquidation and the necessary waivers required under the GSA barring creditors and customers from claiming in two jurisdictions. As such, there will be insufficient time to hold the First Creditors Meeting by 8th February 2024. The JOLs therefore request an extension to the 29th February 2024 to hold the First Creditors Meeting.

115. As of 9th January 2024, the JOLs have received a total of 60,933 notices of intention to file a claim through the creditor portal launched on 13th December 2022. Given the time sensitivity of the instant application as set out above, and the amount of notice of intended claims lodged to date, the JOLs are unable to convene a meeting of creditors (in light of among other things, the notice requirements), or hold a formal vote on the GSA and/or the appointment of a liquidation committee *before* 10th January 2024. The fact that the potential customers and creditors span the length and breadth of the globe creates further difficulties. The JOLs will provide notice of this Sanction application by posting the Summons and Affidavits relative to this application on the website of FTX DM ("In Official Liquidation").

CC. Conclusion

116. In light of the foregoing, the JOLs humbly pray that this Honourable Court do grant the relief as prayed for in the GSA Approval Application.

SWORN TO before me this)
11th day of **January**, 2024 at)
Nassau, N.P., The Bahamas)

.....

Before me,

.....

NOTARY PUBLIC

CHRISTOPHER B. LARSON
NOTARY PUBLIC
NASSAU, BAHAMAS

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

CERTIFICATE

I hereby certify that the attached are true copies of **Exhibits "BCS-1"** referred to in the Fifth Affidavit of Brian Simms KC sworn before me this **11th day** of **January A.D., 2024.**

NOTARY PUBLIC

CHRISTOPHER B. LARSON
NOTARY PUBLIC
NASSAU, BAHAMAS

TAB 1

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

Claim No. 2022/COM/com/00060

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020
(as amended)
AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX Digital Markets Ltd.
(A Registered Digital Asset Business)

WINDING UP ORDER

Before The Honourable Mr Justice Loren Klein
Dated the 10th day of November A.D., 2023

UPON THE HEARING OF THE PETITION of Securities Commission of The Bahamas, presented on 10th November 2022 (**"the Winding-Up Petition"**) for an Order that FTX Digital Markets Ltd (**"the Company"**) be wound up.

AND UPON EVIDENCE OF NOTICE having been provided to those entitled to appear and be heard under Order 3 Rule 15 of The Companies Liquidation Rules 2012.

AND UPON READING the Affidavit of Christina R. Rolle filed on 11 November 2022, Second Affidavit of Christina R. Rolle filed on 9 November 2023, Affidavit of Brian C. Simms KC filed on 11 November 2022, Second Affidavit of Brian C. Simms, KC filed on 14 November 2022, Third Affidavit of Brian C. Simms, KC filed on 6 February 2023, Fourth Affidavit of Brian C. Simms, KC filed on 15 March 2023, Affidavit of Peter J. Greaves filed on 14 November 2022, the Affidavit of Kevin G. Cambridge filed on 14 November 2022, Third Affidavit of Kevin G. Cambridge filed on 13 December 2022, the Fourth Affidavit of Kevin G. Cambridge filed on 13 December 2022, Seventh Affidavit of Kevin G. Cambridge filed on 8 February 2023, Ninth Affidavit of Kevin G. Cambridge filed on 24 May 2023, Eleventh Affidavit of Kevin G.

Cambridge filed on 20 June 2023 and Fourteenth Affidavit of Kevin G. Cambridge filed on 9 November 2023.

AND UPON HEARING IN OPEN COURT Robert K. Adams KC and Edward J. Marshall II of Counsel for Securities Commission of The Bahamas, Sophia Rolle-Kapousouzoglou, Valdere Murphy and Sebastian Masnyk of Counsel for Brian C. Simms, KC, Peter J. Greaves and Kevin G. Cambridge, the Joint Provisional Liquidators of the Company and Peter D Maynard, KC, Jason Maynard and Colin Jupp of Counsel for the Foreign Representative of FTX Trading Ltd.

AND UPON the Court appointed Joint Provisional Liquidators of the Company being present and consenting to appointment as Joint Official Liquidators, if the Court thinks fit

IT IS HEREBY ORDERED AND DIRECTED THAT:-

1. The Company be wound up in accordance with the provisions of the Companies Act, 1992 (as amended) and as applicable to the winding up of International Business Companies under the Companies (Winding Up Amendment) Act, 2011('the Act').

2. Pursuant to sections 200 and 201 of the Act, Brian C. Simms KC of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, New Providence, The Bahamas, Kevin G. Cambridge of 2 Bayside Executive Park, West Bay Street, Nassau, New Providence, The Bahamas and Peter J. Greaves of 22/F, Prince's Building, Central, Hong Kong, the Joint Provisional Liquidators of the Company appointed pursuant to Orders dated 10 November 2022, and 14 November 2022, respectively and filed herein on 11 November 2022, and 15 November 2022, respectively, be and are hereby appointed as Joint Official Liquidators to carry out the winding up of the Company;

3. Pursuant to section 205 of the Act, the Joint Official Liquidators be and are hereby authorized to exercise any of the general powers or to carry out the functions for which they are appointed including,

   (i) with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and

   (ii) without the sanction of the Court the exercise of the general powers specified in Part II of the Fourth Schedule of the Act.

4. Until further order of this Court the Joint Official Liquidators are directed to take all and any necessary steps that they consider fit to and collect and get in all of the property and/or assets of the Company, of whatever nature wherever situate for the avoidance of doubt including any assets held on trust by the Company.

5. The law firm of Lennox Paton will be at liberty to assist the Joint Official Liquidators in the carrying out of the Joint Official Liquidators' functions and duties in the winding up of the Company.

6. The Joint Official Liquidators will on 10 November 2024 and thereafter at twelve-monthly intervals file with this Court subsequent reports in writing as to the position or the progress made in the winding up of the Company, including regarding the realization of the assets thereof (if any), and as to any other matters connected with the winding up of the Company.

7. The Petitioner's and Joint Official Liquidators' costs of these proceedings are to be paid out of the Company's estate and/or trust assets, to be taxed if not agreed.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn by DELANEY PARTNERS of and whose address for service is Lyford Manor (West Bldg), Western Road, Lyford Cay, Nassau, NP, The Bahamas, Attorneys for the Petitioner.

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

WINDING UP ORDER

2022/COM/com/00060

DELANEY PARTNERS
Lyford Manor (West Bldg.)
Western Road, Lyford Cay
New Providence, The Bahamas

Attorneys for the Petitioner

RKA/EJM/sjs 0833-2949

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMERCIAL DIVISION

2022

COM/com/

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER FOR APPOINTMENT OF PROVISIONAL LIQUIDATOR

Before His Lordship, the Honourable Mr. Chief Justice Ian Winder

Dated the 10 day of **November, A.D., 2022**

UPON THE APPLICATION by an unfiled Summons for Directions dated 10th November 2022 on behalf of the Petitioner/Application, the Securities Commission of The Bahamas **("the Applicant")** for an Order that Mr. Brian Cecil Simms KC be appointed provisional liquidator of FTX Digital Markets Ltd. **("the Company")**.

AND UPON HEARING Mr. Gladstone Brown of Counsel for the Applicant, and Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the proposed liquidator.

AND UPON reading the unfiled Petition of the Applicant.

AND UPON READING the unfiled Affidavit of Christina Rolle, Executive Director of the Securities Commission of The Bahamas and the unfiled Affidavit of Brian Cecil Simms KC.

AND UPON the Applicant undertaking by its counsel to pay any damage suffered by the Company, as a result of this order and/or the appointment of a provisional liquidator in the event that the winding up petition is ultimately withdrawn or dismissed.

AND UPON COUNSEL for the Applicant giving an undertaking to file the aforementioned unfiled Petition, Summons for Directions, Affidavit of Christina Rolle and Affidavit of Brian Simms KC as soon as reasonably practicable.

IT IS HEREBY ORDERED that: -

1. Mr Brian Cecil Simms KC of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas be appointed provisional liquidator of the Company **("the Provisional Liquidator").**

2. The Provisional Liquidator is hereby authorised to take any action that he considers fit under the Companies (Winding Up Amendment) Act 2011 **("the Act")**, section 199(4) to maintain the value of the assets owned or managed by the Company or to carry out the functions for which he was appointed including,

    a. with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and
    b. with or without that sanction the exercise of the general powers specified in Part II of the Fourth Schedule of the Act.

3. For the avoidance of doubt, the above-mentioned powers include a power to dispense with the services of the directors and other management of the Company, but the exercise of that power is without prejudice to the duties of the directors and officers under section 230 of the Act.

4. Until further order the Company's directors have no further authority to act or exercise any functions for or on behalf of the Company unless expressly instructed to do so in writing by the Provisional Liquidator.

5. Until further order of this Court the Provisional Liquidator is directed to take all and any necessary steps that he considers fit to protect the assets of the Company wheresoever situate including any assets held on trust by the Company.

6. The remuneration and expenses of the Provisional Liquidator shall be paid out of the assets of the Company in any event.

7. The Winding-Up Petition shall be adjourned to the 10th February 2023 at 10:00am.

8. The Affidavits of Christina Rolle and Brian Cecil Simms KC and other documents to be filed herein save for the petition, and provisional liquidation order shall be sealed and kept confidential until the return date which is set for 10th February 2023 or until further Order.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by the Securities Commission of The Bahamas, 2nd Floor Poinciana House, North Building, 31A East Bay Street, Nassau, N.P., The Bahamas, Attorneys for the Petitioner/Applicant

PENAL NOTICE

IF YOU FTX DIGITAL MARKETS LTD., WHETHER BY ITSELF, ITS DIRECTORS, EMPLOYEES, SERVANTS, AGENTS OR OTHERWISE DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE BREACH OF THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER FOR APPOINTMENT OF PROVISIONAL LIQUIDATOR

2022
COM/com

Securities Commission of The Bahamas

Securities Commission of The Bahamas
2nd Floor Poinciana House,
North Building
31A East Bay Street
Nassau, N.P., The Bahamas
Attorneys for the Petitioner/Applicant

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMERCIAL DIVISION

2022

COM/com/

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER FOR APPOINTMENT OF ADDITIONAL PROVISIONAL LIQUIDATORS

Before His Lordship, the Honourable Mr. Chief Justice Ian Winder

Dated the 14th day of November, A.D., 2022

UPON THE APPLICATION by an Ex-Parte Summons filed herein on 14th November 2022 on behalf of Mr. Brian Cecil Simms KC, the Provisional Liquidation (**"the Provisional Liquidator"**) of FTX Digital Markets Ltd. (**"the Company"**).

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the Provisional Liquidator and Mr. Gawaine Ward with Mr. Gladstone Brown of Counsel for the Securities Commission of The Bahamas.

AND UPON reading the Affidavits of Brian Simms KC, Kevin Cambridge and Peter Greaves collectively filed herein on 14th November 2022.

IT IS HEREBY ORDERED that: -

1. **Messrs. Kevin G Cambridge** and **Peter Greaves** respectively of PricewaterhouseCoopers Advisory (Bahamas) Limited and **PricewaterhouseCoopers**

Limited (incorporated in Hong Kong) be appointed Joint Provisional Liquidators alongside Mr. Brian Cecil Simms KC **("the JPLs")**.

2. The appointment of Messrs. Kevin G. Cambridge and Peter Greaves will take effect on the same terms as paragraphs 2 to 5 of the Order for Appointment of Provisional Liquidator made by this Honourable Court 10 November 2022 (filed herein on 11th November 2022) pursuant to which Mr. Brian Cecil Simms KC was appointed a provisional liquidator by the Honourable Mr. Chief Justice Ian Winder, specifically:

   2.1. The JPLs are hereby authorised to take any action that they consider fit under the Companies (Winding Up Amendment) Act 2011 **("the Act")**, section 199(4) to maintain the value of the assets owned or managed by the Company or to carry out the functions for which they were appointed including,

      a. with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and

      b. with or without sanction of the Court the exercise of the general powers specified in Part II of the Fourth Schedule of the Act.

   2.2. For the avoidance of doubt, the above-mentioned powers include a power to dispense with the services of the directors and other management of the Company, but the exercise of that power is without prejudice to the duties of the directors and officers under section 230 of the Act.

   2.3. Until further order the Company's directors have no further authority to act or exercise any functions for or on behalf of the Company unless expressly instructed to do so in writing by the JPLs.

   2.4. Until further order of this Court the JPLs are directed to take all and any necessary steps that they consider fit to protect the assets of the Company wheresoever situate including any assets held on trust by the Company.

3. The JPLs are authorized to act jointly and severally.

4. That the Affidavit of Brian Simms KC filed herein on 14th November 2022 relied on in support of this application be sealed.

5. The remuneration and expenses of the JPLs shall be paid out of the assets of the Company in any event.

6. The costs of and occasioned by this application be paid out of the assets of the Company.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Provisional Liquidator

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER FOR APPOINTMENT OF ADDITIONAL PROVISIONAL LIQUIDATORS

2022
COM/com

LENNOX PATON
Chambers
No. 3 Bayside Executive Park
Blake Road and West Bay Street
Nassau, New Providence
The Bahamas
Attorneys for the Provisional Liquidator

COMMONWEALTH OF THE BAHAMAS 2022

IN THE SUPREME COURT COM/com/00060

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER
(Sanction Application)

Before His Lordship, the Honourable Chief Justice, Sir Ian Winder

Dated the **20th** day of **March, A.D., 2023**

UPON THE APPLICATION by way of Ex-Parte Summons filed herein on 15th March 2023 on behalf of the Joint Provisional Liquidations **("the JPLs")** of FTX Digital Markets Ltd. **("the Company")**.

AND UPON READING the Fourth Affidavit of Brian Simms KC **("the Fourth Simms Affidavit")** filed herein on 15th March 2023.

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the JPLs.

AND UPON HEARING Mr. Jason Maynard on behalf of Mr. Kurt Knipp **("the Foreign Representative")**, the Foreign Representative of seven (7) Chapter 11 Debtors, namely: West Realm Shires Inc., West Realm Shires Services Inc., Alameda Research LLC, Alameda Research Ltd., Maclaurin Investments Ltd., Clifton Bay Investments LLC and FTX Trading Ltd.

AND UPON THIS HONOURABLE COURT finding that the determination by this Honourable Court of the issues raised by its officers, the JPLs, in the proposed Directions Application (referred to in paragraph 1 of the Order below) is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd in this Honourable Court.

IT IS HEREBY ORDERED that: -

1. The JPLs are hereby sanctioned to seek confirmation and/or approval from the Delaware Bankruptcy Court in the Chapter 11 Proceedings that the JPLs' proposed directions application **("the Directions Application")** to be issued in this Honourable Court in the form as exhibited to the Fourth Affidavit of Brian Simms KC filed herein on 15th March 2023 will not constitute a breach of the automatic stay in the Chapter 11 Proceedings in favour of the Chapter 11 Debtors.

2. Alternatively, if the Delaware Bankruptcy Court is of the view that the Directions Application, would, if issued, constitute a breach of the automatic stay, sanction of this Honourable Court to make an application to the Delaware Bankruptcy Court for relief from the automatic stay in order to avoid any risk of a finding by the Delaware Bankruptcy Court that the JPLs and/or the Company are in breach of the automatic stay in favour of the Chapter 11 Debtors.

3. An Order that the costs of and occasioned by this application be paid out of the assets of the Company and/or trust assets.

4. Such further or other relief as the Court may deem necessary.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER
(Sanction Application)

2022
COM/com/00060

Lennox Paton
LENNOX PATON
Chambers
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The Bahamas
Attorneys for the Joint Provisional Liquidators

GLOBAL SETTLEMENT AGREEMENT

This GLOBAL SETTLEMENT AGREEMENT (including all exhibits, annexes, and schedules attached hereto in accordance with Section 10.03 hereof, this "Agreement") is made and entered into as of December 19, 2023 (the "Execution Date"), by and among FTX Trading Ltd. ("FTX Trading") and its affiliated debtors and debtors-in-possession (including, for the avoidance of doubt, FTX Property Holdings Ltd. ("PropCo") (collectively, the "Debtors") and FTX Digital Markets Ltd. ("FTX DM") acting by the JOLs (as defined below) as agents and without personal liability. The Debtors and FTX DM are collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, on November 10, 2022, (a) the Securities Commission of The Bahamas (the "SCB") filed a petition for the winding up of FTX DM with the Supreme Court of The Bahamas (the "Bahamas Court") and (b) the Bahamas Court ordered a provisional liquidation proceeding for FTX DM (the "Provisional Liquidation");

WHEREAS, on November 11 and November 14, 2022, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"), commencing the chapter 11 cases that are being jointly administered under the caption *In re FTX Trading Ltd.*, *et al.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2023) (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on November 15, 2022, FTX DM filed a petition for recognition of the Provisional Liquidation as a foreign main proceeding under chapter 15 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York and on November 28, 2022, the Bankruptcy Court entered an agreed order to transfer venue to the Bankruptcy Court under the caption *In re: FTX Digital Markets LTD., Debtor in a Foreign Proceeding*, Case No. 22-11217 (JTD) (the "Chapter 15 Case");

WHEREAS, between November and December 2022, FTX DM and the Debtors had various disputes that ultimately were sought to be resolved with a settlement and cooperation agreement (the "Cooperation Agreement") that was executed on January 6, 2023;

WHEREAS, on February 14, 2023, the Bahamas Court granted an order recognizing Mr. Kurt Knipp to act in The Bahamas on behalf of or in the name of Debtors Alameda Research LLC, Alameda Research Ltd., Clifton Bay Investments LLC, FTX Trading Ltd., Maclaurin Investments Ltd., West Realm Shires Inc. and West Realm Shires Services Inc.;

WHEREAS, on February 15, 2023, the Bankruptcy Court entered an order recognizing the Provisional Liquidation as a foreign main proceeding under chapter 15 of the Bankruptcy Code;

WHEREAS, on March 19, 2023, the Debtors commenced an adversary proceeding against FTX DM and the JOLs in *Alameda Research LLC, et al.* v. *FTX Digital Markets Ltd., et al.*, Adv. Pro. No. 23-50145 (JTD) [D.I. 1119] (the "Adversary Proceeding");

WHEREAS, FTX DM and the JOLs disputed the Debtors' allegations and asserted counterclaims against the Debtors in the Adversary Proceeding;

WHEREAS, on March 29, 2023, FTX DM filed a motion in the Chapter 11 Cases seeking an order from the Bankruptcy Court clarifying that the automatic stay does not apply or, in the alternative, for relief from the automatic stay to file an application in the Provisional Liquidation to resolve certain novel and complex legal issues regarding FTX DM's relationship to the FTX.com Exchange (as defined below) and its customers (the "Lift Stay Motion");

WHEREAS, on June 20, 2023, the Bankruptcy Court entered an order denying the Lift Stay Motion and ordered the parties to mediate;

WHEREAS, on November 10, 2023, the Bahamas Court granted an order that, among other things, (a) appointed the JOLs as joint official liquidators of FTX DM and (b) determined that FTX DM be wound up in accordance with the Bahamas Companies Act;

WHEREAS, the Debtors and FTX DM commenced mediation and have sought consensual extensions of the time to respond to claims and counterclaims asserted in the Adversary Proceeding;

WHEREAS, the Parties have engaged in good faith, arm's-length negotiations over a period of many months regarding the terms of a global settlement to resolve all disputes between the Parties and the mutual support to their respective insolvency proceedings;

WHEREAS, the Debtors have provided the JOLs access to certain pre- and post-filing books, records, and analyses of the Debtors regarding the accounts of FTX DM and the Debtors;

WHEREAS, the JOLs have reviewed such books, records, and analyses and have concluded that FTX.com Exchange (as defined below) records are so commingled (both as between Dotcom Customers' funds and as between FTX DM and the Debtors) that neither the accounts of FTX DM and the Debtors nor those of individual Dotcom Customers can be recreated, and that tracing of assets and funds is not feasible;

WHEREAS, each Party has an interest in avoiding the uncertainty, delay, cost and expense that is associated with litigation of the disputes between the Parties, including the novel legal, factual and equitable issues raised in connection with the Adversary Proceeding, the Lift Stay Motion, the Cooperation Agreement, the DM Liquidation and the Chapter 11 Cases, generally;

WHEREAS, without any admission by either Party, each Party desires to settle all disputes between them, including the Adversary Proceeding, and to express to the other Party its support and commitment with respect to the other Party's insolvency and any related or ancillary proceedings; and

WHEREAS, the Parties have agreed to take certain actions in support of the global settlement governed by this Agreement (the "Global Settlement") on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

Article I. Definitions and Interpretation

Section 1.01 Definitions. The following terms shall have the following definitions:

"Acceptable DM Liquidation" means a liquidation of FTX DM proposed by the JOLs that is consistent with this Agreement.

"Acceptable Plan" means a Chapter 11 Plan proposed by the Debtors that (a) is consistent with this Agreement, including the provisions with respect to FTX DM and PropCo, and incorporates the releases set forth in Article IX; (b) taken as a whole, treats holders of FTX.com Customer Entitlement Claims not materially less favorably than as contemplated by the Plan Term Sheet, (c) includes post-Plan Effective Date governance that is reasonably acceptable to FTX DM, and (d) is otherwise reasonably acceptable to FTX DM.

"Administrative Expenses" means reasonable past documented, and reasonable estimates of future fees, costs, charges, liabilities and other expenses incurred or to be incurred in the course of the DM Liquidation or the Chapter 11 Cases (as the case may be), including such sums incurred in pursuing DM-Controlled Recovery Actions or Debtors-Controlled Recovery Actions (as the case may be) and, in the case of the DM Liquidation, all expenses listed in O.20 r.1(1) of the Bahamas Companies Liquidation Rules 2012 and s.204 of the Bahamas Companies Act and, in the case of the Chapter 11 Debtors, any costs or expenses of administration of the Chapter 11 Cases of a kind specified under section 503 of the Bankruptcy Code.

"Admitted" means, with respect to any Claim in the DM Liquidation, that such Claim has been admitted as a proof in the DM Liquidation pursuant to section 235 of the Bahamas Companies Act.

"Advance DM Loan" means a loan made by FTX Trading to FTX DM under the Loan Agreement, dated as of the date hereof, between FTX Trading, as lender, and FTX DM, a borrower.

"Adversary Proceeding" has the meaning set forth in the recitals to this Agreement.

"Adversary Proceeding Parties" has the meaning set forth in Section 7.01.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative

meanings, the terms "controlling," "controlled by," and "under common control with"), as used with respect to any Entity, shall mean the possession, directly or indirectly, of the right or power to direct or cause the direction of the management or policies of such Entity, whether through the ownership of voting securities, by agreement, or otherwise.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Agreement Effective Period" means the period from the Initial Settlement Effective Date to the Termination Date.

"Allowed" has the meaning set forth in the Chapter 11 Plan.

"Applicable Petition Date" means (a) with respect to the Debtors, November 11, 2022 and (b) with respect to FTX DM, November 10, 2022.

"Bahamas Approval Orders" has the meaning set forth in Section 4.01(a).

"Bahamas Bar Date" has the meaning set forth in Section 5.01.

"Bahamas Code" means the Bahamas Companies Act, Companies Liquidation Rules, 2012 and Insolvency Practitioners' Rules, 2012.

"Bahamas Companies Act" means The Bahamas' Companies Act (as amended by *inter alia* the Companies (Winding Up Amendment) Act, 2011).

"Bahamas Court" has the meaning set forth in the recitals to this Agreement.

"Bahamas Customer" means a Dotcom Customer that has made a valid Opt-In Election.

"Bahamas Properties" has the meaning set forth in Section 2.04(a).

"Bankruptcy Code" has the meaning set forth in the recitals to this Agreement.

"Bankruptcy Court" has the meaning set forth in the recitals to this Agreement.

"Business Day" means any day other than a Saturday, Sunday, public holiday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York or in Nassau, The Bahamas.

"Cause of Action" means any action, Claim, cause of action, controversy, demand, right, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, right of subordination, netting, recoupment and franchise of any kind or character whatsoever, whether known, unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in contract or in tort, in law or in equity, or pursuant to any other theory of law.

"Chapter 11 Approval Orders" has the meaning set forth in Section 3.01(a).

"Chapter 11 Cases" has the meaning set forth in the recitals to this Agreement.

"Chapter 11 Plan" means a joint plan of reorganization (including any supplement thereto and all exhibits, annexes, and schedules attached thereto) proposed by the Debtors in the Chapter 11 Cases pursuant to section 1121(a) of the Bankruptcy Code.

"Chapter 11 Schedules" means the schedules of assets and liabilities filed by the Debtors in the Chapter 11 Cases, each as may be amended, supplemented or modified from time to time.

"Chapter 15 Case" has the meaning set forth in the recitals.

"Claim" with respect to any Debtor, has the meaning ascribed to it in section 101(5) of the Bankruptcy Code, and with respect to FTX DM, has the meaning ascribed to it in section 235 of the Bahamas Companies Act.

"Class 5A Cumulative Distribution Percentage" means, on any distribution date, the amount expressed as the cumulative percentage determined by the Debtors to be distributable on Allowed Trading Customer Entitlement Claims as of such distribution date, taking into account distributable cash and appropriate reserves.

"Commenced KYC" means, for any Dotcom Customer who has made a valid Opt-In Election, that such Dotcom Customer shall have provided the information that is required by the KYC Procedures for the assessment of eligibility for Allowance or Admission, as applicable, of a FTX.com Customer Entitlement Claim and to receive distributions on account of such FTX.com Customer Entitlement Claim.

"Confirmation Order" means the order entered by the Bankruptcy Court confirming an Acceptable Plan in a form reasonably acceptable to FTX DM with respect to provisions that relate to FTX DM, PropCo, the JOLs, or this Agreement.

"Control Person" means any of (a) Samuel Bankman-Fried, Zixiao "Gary" Wang, Nishad Singh, Caroline Ellison, and (b) any Person with a familial relationship with any of the foregoing individuals.

"Controlling Party" means (a) with respect to a Debtors-Controlled Recovery Action, the Debtors and (b) with respect to a DM-Controlled Recovery Action, FTX DM, or the JOLs.

"Cooperation Agreement" has the meaning set forth in the recitals to this Agreement.

"Debtors" has the meaning set forth in the preamble to this Agreement.

"Debtors-Controlled Recovery Action" means any Recovery Action that is not a DM-Controlled Recovery Action; *provided* that Debtors-Controlled Recovery Actions shall not include any Recovery Action against any Released Party.

"*De Minimis* Claim" means any Claim classified and treated as a *De Minimis* Claim in the Acceptable Plan.

"Digital Asset" means a DLT Digital Asset or a Pre-Launch Cryptocurrency.

"Disputed Digital Assets" means any Digital Asset agreed between the Parties by agreement between counsel to each Party conveyed in writing (including electronic mail) between such counsel.

"DLT Digital Asset" means any digital representation of value or units that is issued or transferable using distributed ledger or blockchain technology, including stablecoins, cryptocurrency and non-fungible tokens.

"DM-Controlled Recovery Action" means a Recovery Action that: (a) the Debtors and FTX DM have agreed in writing shall constitute a DM-Controlled Recovery Action; (b) arises out of or relates to an avoidable or potentially avoidable withdrawal from the FTX.com Exchange by any Dotcom Customer (other than an Excluded Party) who is a Specified Jurisdiction Resident or a Bahamas Customer; (c) arises out of or relates to an avoidable or a potentially avoidable transfer made directly by FTX DM or PropCo to any Person other than a Dotcom Customer who is (i) not a Bahamas Customer or (ii) an Excluded Party; or (d) is a potential defense to a DM Customer Entitlement Claim; *provided* that a Recovery Action shall constitute a DM-Controlled Recovery Action for purposes of this clause (d) solely to the extent such Dotcom Customer Recovery Action is asserted by FTX DM as a defense to a DM Customer Entitlement Claim; *provided* further that DM-Controlled Recovery Actions shall not include any Recovery Action against any Released Party.

"DM Customer Entitlement Claim" means a FTX.com Customer Entitlement Claim in the DM Liquidation as a result of an Opt-In Election; *provided* that no Claim held by an Excluded Party shall constitute a DM Customer Entitlement Claim.

"DM Customer Reference Amount" means, on any distribution date, the amount expressed in U.S. Dollars that is necessary for all Eligible DM Customer Entitlement Claims receiving distributions on such distribution date to have received, on or prior to such distribution date, aggregate distributions expressed as a percentage of the face amount of such Eligible DM Customer Entitlement Claims equal to the Class 5A Cumulative Distribution Percentage.

"DM Distributable Cash" means, on any distribution date, the amount expressed in U.S. Dollars of cash and cash equivalents in the FTX DM estate after paying Administrative Expenses and establishing appropriate reserves for Administrative Expenses, excluding any cash balance in the DM Non-Customer Account that FTX DM determines to be required to satisfy in full all Admitted DM Non-Customer Claims pursuant to Section 5.03(b).

"DM Excess Claim" means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, rule or regulation, common law or otherwise) of a Dotcom Customer arising out of or related to accounts or positions on the FTX.com Exchange, other than a DM Customer Entitlement Claim.

"DM Liquidation" means FTX DM's liquidation or winding up proceeding in The Bahamas.

"DM Non-Customer Account" means a segregated account to be opened in the name of FTX DM and funded pursuant to Section 5.03(c).

"DM Non-Customer Claim" means any Claim (including any trade or other general unsecured claim or governmental claim) filed against FTX DM that is not a DM Customer Entitlement Claim or a DM Excess Claim.

"DM Non-Customer Claims Pool" means all property in the DM Non-Customer Account.

"DOJ" means the U.S. Department of Justice.

"DOJ Seized Funds" means any funds that may be received from the DOJ relating to amounts seized from the bank accounts in the name of FTX DM at Farmington State Bank (d/b/a Moonstone Bank) and Silvergate Bank specified in Exhibit A hereto.

"Dotcom Convenience Claim" means any Claim classified and treated as Dotcom Convenience Claim in the Acceptable Plan.

"Dotcom Customer" means any customer of record on the FTX.com Exchange at any time.

"Dotcom Customer Pool" has the meaning set forth in the Plan Term Sheet.

"Dotcom Customer Preference Action" has the meaning set forth in Section 5.05(a).

"Dotcom Customer Preference Offer" has the meaning set forth in Section 5.05(a).

"Dotcom Customer Recovery Action" means any Recovery Action arising out of or related to a transfer by FTX DM or any Debtor to any Person in such Person's capacity as a Dotcom Customer.

"Eligible DM Customer Entitlement Claim" means, as of any distribution date, any DM Customer Entitlement Claim (or portion thereof) that: (a) is the subject of a valid Opt-In Election on or prior to the Bahamas Bar Date; (b) is held by a Dotcom Customer that has Commenced KYC by the KYC Cut-off Date and has satisfied the KYC Procedures in respect of itself and the Original Customer of such Customer Entitlement Claim by the applicable distribution date; and (c) either (i) has been Admitted against FTX DM in an amount not greater than the Guideline Amount; (ii) has been determined in a Joint Claims Hearing to be a Claim that would have been Allowed as a FTX.com Customer Entitlement Claim; or (iii) has been approved by the Debtors as an Eligible DM Customer Entitlement Claim, whether pursuant to Section 5.03(d)(iv) or otherwise.

"Entity" shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

"Excluded Party" means any (a) Control Person, Insider or Affiliate of a Control Person or Insider; (b) holder or subsequent transferee of such holder of a Claim against any Debtor other than a FTX.com Customer Entitlement Claim; or (c) Person or any initial or subsequent transferee of such Person against whom the Debtors determine they have any Cause of Action (other than for withdrawals of cash or Digital Assets from the FTX.com Exchange) that are identified on a schedule to be provided by the Debtors to FTX DM in accordance with Section 5.02(b).

"Excluded Preference Claim" has the meaning set forth in the Plan Term Sheet.

"Execution Date" has the meaning set forth in the preamble to this Agreement.

"Existing Confidentiality Arrangements" means the Confidentiality Arrangements between the Parties dated as of January 30, 2023, as amended, supplemented and modified from time to time.

"Fenwick Retainer Receivable" means the receivable held by FTX DM against Fenwick & West LLP in respect of a retainer in the amount of $3.5 million.

"Final Settlement Effective Date" means the Plan Effective Date.

"FTX DM" has the meaning set forth in the preamble to this Agreement.

"FTX Trading" has the meaning set forth in the preamble to this Agreement.

"FTX.com Customer Entitlement Claim" means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, under the Bankruptcy Code, the Bahamas Code, federal or state law, rule or regulation, common law or otherwise) held by any Person against any of the Debtors or FTX DM to recover or that compensates such Person for the value of cash or Digital Assets credited to an FTX.com Exchange account in the name of such Person in accordance with the calculation procedures set forth in Section 5.03(d)(ii). For the avoidance of doubt, any Claim for the appreciation in the value of a Digital Asset after the Applicable Petition Date is not a FTX.com Customer Entitlement Claim and, if against FTX DM, shall constitute a DM Excess Claim.

"FTX.com Exchange" means the FTX.com trading platform.

"FTX.com Exchange Assets Buyer" means any entity that acquires assets from the Debtors pursuant to the FTX.com Exchange Asset Sale Transaction.

"FTX.com Exchange Asset Sale Transaction" means any transaction or series of transactions approved by the Bankruptcy Court involving the sale, disposition or other monetization of property of the Debtors associated with the FTX.com Exchange (whether alone or together with any other assets of the Debtors) or any other transaction that would permit the

Debtors, a successor thereof, or an acquirer of any assets associated with the FTX.com Exchange to operate an offshore platform not available to U.S. investors.

"FTX.com Exchange Intellectual Property" means the following, as used in, related to or associated with the FTX.com Exchange, all intellectual property and other similar proprietary rights arising in any jurisdiction of the world, whether registered or unregistered, including in and to any of the following: (a) Trademarks; (b) patents and patent applications, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, re-examinations, extensions and reissues; (c) trade secrets, know-how, customer lists and other proprietary rights in confidential information; (d) published and unpublished works of authorship, whether copyrightable or not, including data and databases, web code, copyrights, applications and registrations therefor, and renewals, extensions, restorations and reversions thereof; and (e) Internet domain names, social media identifiers and URLs. Without limiting the foregoing, FTX.com Exchange Intellectual Property includes the "FTX" Trademark and any derivatives or variations thereof, including any Internet domain names, social media identifiers and URLs that incorporate any of the foregoing.

"Global Settlement" has the meaning set forth in the recitals to this Agreement.

"Guideline Amount" means, for any DM Customer Entitlement Claim, (a) the USD Equivalent of the cash and Digital Assets set forth in the Chapter 11 Schedules calculated as of the Chapter 11 Petition Date (without any adjustment for subsequent changes in value of any Digital Assets) *minus* (b) for any Dotcom Customer with Net Preference Exposure greater than $250,000, 15% of any Net Preference Exposure attributable to the holder of such FTX DM Customer Entitlement Claim on the books and records of the Debtors.

"Ineligible DM Customer Entitlement Claim" means any DM Customer Entitlement Claim (or portion thereof) that is not an Eligible DM Customer Entitlement Claim.

"Initial Settlement Effective Date" means the first date on which all Bahamas Approval Orders, Chapter 11 Approval Orders have been entered.

"Insider" has the meaning set forth in section 101(31) of the Bankruptcy Code and includes any non-statutory insiders of the Debtors and affiliates of the Debtors.

"JIN Guidelines" mean the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network in October 2016 as reflected in Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 9029-2.

"Joint Claims Hearing" means a hearing jointly conducted by the Bankruptcy Court and the Bahamas Court in accordance with the JIN Guidelines to determine whether a DM Customer Entitlement Claim (or portion thereof) constitutes an Eligible DM Customer Entitlement Claim.

"JOLs" means, at any time, Brian C. Simms KC, Kevin G. Cambridge and Peter Greaves in their capacity as joint and several official liquidators of FTX DM (and in their capacity as joint and several provisional liquidators, where applicable) together with any

additional or successor Person or Persons who take or hold office as joint official liquidators of FTX DM.

"KYC Cut-off Date" means the date that is the later of (a) ninety (90) days after the Opt-In Deadline and (b) thirty (30) days after the Plan Effective Date or such other date as may be ordered by the Bankruptcy Court.

"KYC Procedures" has the meaning set forth in Section 5.08(a).

"Law" means any federal, state, local, Bahamas or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court and the Bahamas Court).

"Lift Stay Motion" has the meaning set forth in the recitals to this Agreement.

"Net Preference Exposure" has the meaning set forth in the Plan Term Sheet.

"Non-Controlling Party" means (a) with respect to a Debtors-Controlled Recovery Action, FTX DM and the JOLs; and (b) with respect to a DM-Controlled Recovery Action, the Debtors.

"Opt-In Deadline" means the Bahamas Bar Date.

"Opt-In Election" has the meaning set forth in Section 5.02(a).

"Original Customer" means, with respect to a DM Customer Entitlement Claim, the Holder of such FTX.com Customer Entitlement Claim as of November 10, 2022.

"Party" has the meaning set forth in the preamble to this Agreement.

"Person" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any governmental authority.

"Plan Effective Date" means the date on which the last condition to the effectiveness of an Acceptable Plan has been satisfied or waived in accordance with the terms thereof and such Acceptable Plan becomes effective.

"Plan Term Sheet" means the term sheet attached to the Plan Support Agreement filed by the Debtors in the Chapter 11 Cases on October 16, 2023 [D.I. 3291].

"Pre-Launch Cryptocurrency" means an asset that would have been a DLT Digital Asset but for the fact that such asset has not been issued and is not transferable using distributed ledger or blockchain technology as of November 11, 2022.

"PropCo" has the meaning set forth in the preamble to this Agreement.

"PropCo Ordinary Course Claim" means any prepetition Claim against PropCo arising in the ordinary course in respect of the ownership, use, sale or transfer of the Bahamas Properties.

"Properties Exclusive Sales Agency Agreement" means the Properties Exclusive Sales Agency Agreement, dated as of the date hereof, between FTX Trading, PropCo and FTX DM.

"Properties Sales Procedures" has the meaning set forth in Section 2.04(a).

"Provisional Liquidation" has the meaning set forth in the recitals to this Agreement.

"Recovery Action" means any actual or potential Cause of Action (a) arising out of or relating to a transfer of property or the incurrence of an obligation or any distribution or other transaction made by or on behalf of the Debtors or FTX DM, or their estates or creditors, under (i) sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) or other applicable sections of the Bankruptcy Code, (ii) sections 228, 229, 230, 236, 241, 242, 243, and 244 of the Bahamas Code or (iii) similar or related local, state, federal, or foreign statutes and common law, including preferential and fraudulent transfer laws or (b) that may be asserted by any of the Debtors or FTX DM against an officer, director, fiduciary, insurer, or any other Person or Entity; *provided* that no Cause of Action shall constitute a Recovery Action to the extent such Cause of Action is (A) asserted by a Debtor against FTX DM, (B) asserted by FTX DM against a Debtor or (C) asserted by any Debtor or FTX DM against a governmental authority with respect to Taxes.

"Released Parties" has the meaning set forth in Section 9.01.

"Releasing Parties" has the meaning set forth in Section 9.01.

"SCB" has the meaning set forth in the recitals to this Agreement.

"Specified Jurisdiction Resident" means any Person that is listed in the customer records of the FTX.com Exchange as a resident in any jurisdiction listed in Exhibit B hereto.

"Stipulated Debtors Property" means any interest in property of the Debtors or FTX DM (including the Disputed Digital Assets) other than Stipulated DM Property.

"Stipulated DM Property" means the assets, interests, rights or property, as the case may be, listed in Exhibit C hereto.

"Stipulated PropCo Claim" has the meaning set forth in Section 2.04(b).

"Taxes" means (a) any and all federal, state, Bahamian, local or foreign contributions, taxes, fees, imposts, duties and similar governmental charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental unit, including any taxes on income, profits or gross receipts, ad valorem, value added, capital gains, sales, excise, use, real property, withholding,

estimated, social security, housing fund, retirement fund, profit sharing, customs, import duties and fees and any other governmental contributions, and (b) any transferee or successor liability in respect of any items described in clause (a) above.

"Termination Date" means the date on which termination of this Agreement as to a Party is effective in accordance with Article VIII.

"Trademarks" means any trademarks, service marks, logos, symbols, trade names, and other indicia of origin, applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby.

"Trading Customer Entitlement Claim" means any FTX.com Customer Entitlement Claim that is not (a) a DM Customer Entitlement Claim, (b) a Dotcom Convenience Claim, or (c) a *De Minimis* Claim.

"USD Equivalent" of any cash or Digital Assets means the value in U.S. Dollars determined by order of the Bankruptcy Court to be applicable to such cash or Digital Assets for purposes of the allowance of Claims in the Chapter 11 Cases.

Section 1.02 Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and the neutral gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference in this Agreement to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) any capitalized terms in this Agreement that are defined with reference to another agreement are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date of this Agreement;

(e) if any payment, distribution, act or deadline under this Agreement is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date;

(f) unless otherwise specified, all references in this Agreement to "Sections" are references to Sections of this Agreement;

(g) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(h) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(i) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(j) the use of "include" or "including" is without limitation, whether stated or not;

(k) all references to "$" and "dollars" will be deemed to refer to United States currency unless otherwise specifically provided; and

(l) the word "or" shall not be exclusive.

Article II. Disputed Property

Section 2.01 Allocation of Disputed Property. The Parties agree that, on the Final Settlement Effective Date, (a) all right, title and interest of the Parties in the Stipulated DM Property shall vest with the estate of FTX DM free and clear of all Claims and interests of the Debtors and (b) all right, title and interest of the Parties in the Stipulated Debtors Property shall vest with the estate of the Debtors free and clear of all Claims and interests of FTX DM. Each Party shall take such commercially reasonable actions as may be reasonably requested by the other Party to give effect to this Section 2.01. Except as otherwise provided in this Agreement, each Party shall be responsible for all Taxes and out-of-pocket costs and expenses incurred on or after the Final Settlement Effective Date with respect to the property allocated to it hereby.

Section 2.02 Conduct of Litigation Involving Third Parties.

(a) DM-Controlled Recovery Actions. As between the Parties, FTX DM shall have the right to manage and control the prosecution of the DM-Controlled Recovery Actions, including any decision to investigate, assert, resolve or settle such DM-Controlled Recovery Actions in whole or in part; *provided* that FTX DM shall consult with the Debtors prior to the settlement of any material DM-Controlled Recovery Action.

(b) Debtors-Controlled Recovery Actions. As between the Parties, the Debtors shall have the right to manage and control the prosecution of any Debtors-Controlled Recovery Actions, including any decision to investigate, assert, prosecute, resolve or settle such Debtors-Controlled Recovery Actions in whole or in part; *provided* that the Debtors shall consult with FTX DM prior to the settlement of any material Debtors-Controlled Recovery Action.

(c) Cooperation in Respect of Recovery Actions. The Parties shall cooperate and use commercially reasonable efforts to maximize recoveries from all Recovery Actions. Upon request by the Controlling Party, subject to the Bankruptcy Court or Bahamas Court

approval, if required, the Non-Controlling Party shall take such actions, or refrain from taking such actions, with respect to a Recovery Action as may be requested by the Controlling Party, in the reasonable discretion of the Controlling Party, from time to time. Subject to the Bankruptcy Court or Bahamas Court approval, if required, the Non-Controlling Party shall cooperate with the Controlling Party in connection with the investigation, assertion, prosecution, resolution and settlement of any Recovery Action, including (i) making available to the Controlling Party and its advisors relevant records and information (subject in all respects to the terms of the Existing Confidentiality Arrangements and Section 2.03 hereof) and (ii) participating in litigation as a plaintiff, co-plaintiff or other appropriate party, in each case as may be reasonably necessary for the Controlling Party to investigate, assert, prosecute, resolve or settle such Recovery Action; *provided* that the Controlling Party shall be responsible for any and all adverse costs ordered and shall indemnify the Non-Controlling Party (including, with respect to FTX DM, the JOLs, and with respect to the Debtors, the Debtors' directors and officers) for such costs. The Non-Controlling Party shall not object to, delay, impede, or take any other action to interfere with any Recovery Action controlled by the Controlling Party. Except as provided in this Section 2.02(c), the Parties shall each bear their own costs and expenses in connection with any Recovery Actions, whether or not the Controlling or the Non-Controlling Party.

Section 2.03 Information Sharing. Subject in all respects to the terms of the Existing Confidentiality Arrangements, the Parties agree to share information in their possession concerning the matters contemplated by this Agreement, including, in respect of: (a) any Stipulated DM Property or Stipulated Debtors Property; (b) any Recovery Action; (c) the negotiation, solicitation, confirmation, approval or consummation of an Acceptable Plan and an Acceptable DM Liquidation and all material developments in matters relating thereto; (d) FTX.com Customer Entitlement Claims, and distributions relating thereto; (e) Opt-In Elections and the exercise thereof; (f) Administrative Expenses; and (g) any other information that is reasonably requested by the other Party for the administration of their Estate; *provided* that nothing in this Agreement shall oblige a Party to share privileged materials with the other Party or share any information in violation of applicable Law or any confidentiality arrangement binding such Party at the time of such request.

Section 2.04 PropCo.

(a) Bahamas Properties Sales Process. Each Party agrees to the joint process set forth in the Properties Exclusive Sales Agency Agreement for the prompt cash sale of real estate owned by PropCo in The Bahamas (the "Bahamas Properties") free and clear of all Claims and interests of creditors of the Parties' estates (the "Properties Sales Procedures").

(b) Allowance of PropCo Claim. The Parties stipulate that, effective as of the Final Settlement Effective Date, a Claim of FTX DM against PropCo (the "Stipulated PropCo Claim") shall be stipulated and Allowed as an unsecured, unsubordinated, prepetition Claim in the amount of $256,291,221.47; *provided* that the Stipulated PropCo Claim shall be subordinated to the PropCo Ordinary Course Claims. In no event shall FTX DM assert the Stipulated PropCo Claim against any other Debtor.

(c) Objection to Claims Against PropCo. The Debtors shall, in consultation with FTX DM, object to and contest any and all Claims asserted in the Chapter 11 Cases against

PropCo (other than the Stipulated PropCo Claim, any PropCo Ordinary Course Claim, or any Claim for an Administrative Expense of PropCo), and shall not settle such Claim without the prior written consent of FTX DM or make any distribution to the holder of such Claim without the prior written consent of FTX DM or order of the Bankruptcy Court. The Debtors shall use reasonable commercial efforts to file objections to Claims against PropCo in accordance with this Section 2.04(c) before the Plan Effective Date. In the event that the aggregate amount of Allowed Claims and Claims for Administrative Expenses of PropCo that are senior to or *pari passu* with the Stipulated PropCo Claim exceeds $50 million, then the amount of cash to be transferred by the Debtors to DM in accordance with Exhibit C hereto shall be increased by an amount equal to (i) the amount that would have been distributed to FTX DM from the PropCo estate had the aggregate amount of Allowed Claims and Claims for Administrative Expenses of PropCo that are senior to or *pari passu* with the Stipulated PropCo Claim been $50 million *minus* (ii) the amount actually distributed to FTX DM from the PropCo estate.

(d) Distributions of Proceeds on and after the Final Settlement Effective Date. PropCo shall be treated separately under the Chapter 11 Plan and not substantively consolidated with any other Debtor. FTX DM agrees that it shall not sell, transfer or assign any interest, directly or indirectly, in the Stipulated PropCo Claim without the prior written consent of the Debtors (and any purported assignment without consent shall be null and void). FTX DM agrees that it shall apply all net proceeds received on the Stipulated PropCo Claim in accordance with the terms and conditions of this Agreement.

Section 2.05 Monetization and Transfer of Assets.

(a) Prompt Transfer of Digital Assets held by the SCB. FTX DM shall use commercially reasonable efforts to obtain the return of the Digital Assets held by the SCB. Upon such return, FTX DM shall transfer all such Digital Assets to the Debtors.

(b) Realization of Assets. Each Party shall cooperate and use commercially reasonable efforts to assist (including by providing any consents or authorizations) the other Party in the prompt realization of assets allocated to the other Party under Section 2.01, including, with respect to the transfer of the Disputed Digital Assets, the release of the DOJ Seized Funds to FTX DM's estate, and in monetizing the Bahamas Properties.

(c) Application of Funds at FTX DM. FTX DM shall apply cash and other property it controls solely to pay (subject to approval by the Bahamas Court) or reserve for Administrative Expenses of FTX DM, in each case, after ten (10) days advance notice to the Debtors; *provided* that, after the Final Settlement Effective Date, FTX DM may also apply Stipulated DM Property to pay or reserve for Administrative Expenses or make distributions in the DM Liquidation in accordance with this Agreement and applicable Law. FTX DM shall provide such historical financial information and projections to the Debtors as the Debtors may reasonably request from time to time.

Section 2.06 FTX.com Exchange Asset Sale Transaction.

(a) The Debtors shall consult with FTX DM in respect to any FTX.com Exchange Asset Sale Transaction.

(b) In the event of an FTX.com Exchange Asset Sale Transaction within two (2) years from the Execution Date, at the request of FTX Trading (on behalf of the Debtors) and subject to receipt of any necessary governmental or regulatory approvals, FTX DM shall, effective immediately upon closing of any FTX.com Exchange Asset Sale Transaction, transfer, assign, convey, and deliver to, at FTX Trading's election, either (i) the FTX.com Exchange Assets Buyer or (ii) FTX Trading (for immediate transfer, assignment, conveyance and delivery by FTX Trading to the FTX.com Exchange Assets Buyer), in each case, for no additional consideration, all of FTX DM's right, title and interest in and to any FTX.com Exchange Intellectual Property, free and clear of all claims and interests of FTX DM for application pursuant to an Acceptable Plan. To the extent required under applicable Law, FTX DM shall file applications to obtain orders from the Bahamas Court, in form and substance reasonably satisfactory to the Debtors, authorizing such transfer, assignment, conveyance and delivery. Upon and following the foregoing assignment, FTX DM shall not use or otherwise exploit any FTX.com Exchange Intellectual Property. For the avoidance of doubt, no licenses or registrations held by FTX DM under the Digital Assets and Registered Exchanges Act enacted by the Parliament of The Bahamas shall be transferred, assigned, conveyed or delivered pursuant to this Section 2.06(b). Any Taxes, out-of-pocket costs and expenses incurred by FTX DM in respect of this Section 2.06(b) shall be borne by the Debtors.

(c) FTX DM shall not transfer, assign, convey, sell, dispose of, lease, license, mortgage, pledge, encumber, or divest any licenses or registrations held by FTX DM under the Digital Assets and Registered Exchanges Act enacted by the Parliament of The Bahamas. FTX DM shall not consent to and shall object to any such transfer, assignment, conveyance, sale, disposition, lease, license, mortgage, pledge, encumbrance, or divestiture.

Article III. The Chapter 11 Plan

Section 3.01 Debtors' Commitments. During the Agreement Effective Period, the Debtors shall use commercially reasonable efforts to:

(a) provide access to the pre- and post-filing books and records of the Debtors as reasonably requested by the JOLs in connection with the Bahamas Approval Orders and any related submissions to the Bahamas Court, subject to any applicable privileges;

(b) by no later than January 10, 2024, file with the Bankruptcy Court motions seeking orders, each in form and substance reasonably satisfactory to FTX DM, approving (i) this Agreement; (ii) the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures; and (iii) the Advance DM Loan (the "Chapter 11 Approval Orders"); *provided* that the Debtors agree to file the motion seeking an order from the Bankruptcy Court approving the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures as soon as practicable;

(c) pursue solicitation, confirmation, approval, and consummation of an Acceptable Plan;

(d) to the extent any legal or structural impediment arises that would prevent, hinder, or delay solicitation, confirmation, approval, or consummation of an Acceptable Plan, support and take all steps reasonably necessary and desirable to address any such impediment;

(e) obtain any and all required governmental, regulatory and third-party approvals for the implementation or consummation of an Acceptable Plan;

(f) timely file a formal objection to any motion filed with the Bankruptcy Court by any Person seeking the entry of an order for relief that (i) is inconsistent with this Agreement in any material respect or (ii) would, or would reasonably be expected to, frustrate the purposes of this Agreement, including by preventing the consummation of an Acceptable Plan;

(g) give FTX DM prior notice of any motion or other pleading concerning this Agreement or any of the matters contemplated hereby that is filed on behalf of the Debtors with any court in the United States;

(h) establish appropriate reserves to make payments to FTX DM that are required under this Agreement; and

(i) not file any motion or pleading (or support any motion or pleading filed by any other Person) with the Bankruptcy Court that, in whole or in part, is materially inconsistent with this Agreement or an Acceptable Plan.

Section 3.02 FTX DM's Commitments. During the Agreement Effective Period, FTX DM shall use commercially reasonable efforts to:

(a) provide access to the pre- and post-filing books and records of FTX DM as reasonably requested by the Debtors in connection with the Chapter 11 Approval Orders, the Chapter 11 Plan, and any related submissions to the Bankruptcy Court, subject to any applicable privileges;

(b) support solicitation, confirmation, approval, and consummation of an Acceptable Plan, including by voting the Stipulated PropCo Claim to accept an Acceptable Plan;

(c) to the extent any legal or structural impediment arises that would prevent, hinder, or delay solicitation, confirmation, approval, or consummation of an Acceptable Plan, support the Debtors in all reasonably necessary and desirable steps to address any such impediment;

(d) not object to, delay, impede, or take any other action to interfere with (i) solicitation, confirmation, approval, and consummation of an Acceptable Plan or (ii) any motion, application or other pleading or document filed by the Debtors in the Bankruptcy Court that is not inconsistent with this Agreement;

(e) not take or agree to take any action to support or facilitate in any manner any chapter 11 plan other than an Acceptable Plan; and

(f) not file any motion or pleading (or support any motion or pleading filed by any other Person) with the Bankruptcy Court that, in whole or in part, is materially inconsistent with this Agreement or an Acceptable Plan.

Article IV. The DM Liquidation

Section 4.01 FTX DM's Commitments. During the Agreement Effective Period, FTX DM shall use commercially reasonable efforts to:

(a) by no later than January 10, 2024, (x) file applications to obtain orders from the Bahamas Court, each in form and substance reasonably satisfactory to the Debtors sanctioning (i) this Agreement; (ii) the Properties Exclusive Sales Agency Agreement and the PropCo Sale Procedures; and (iii) the Advance DM Loan and (y) file a motion to approve this Agreement in the Bankruptcy Court with respect to the Chapter 15 Case (the "Bahamas Approval Orders"); *provided* that FTX DM agrees to file the application seeking an order from the Bahamas Court sanctioning the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures as soon as practicable;

(b) promptly conduct an Acceptable DM Liquidation;

(c) to the extent any legal or structural impediment arises that would prevent, hinder, or delay an Acceptable DM Liquidation, support and take all steps reasonably necessary and desirable to address any such impediment;

(d) obtain any and all required governmental, regulatory and third-party approvals for the implementation or consummation of this Agreement;

(e) timely file a formal objection to any pleading filed with the Bahamas Court by any Person seeking the entry of an order for relief that (i) is inconsistent with this Agreement in any material respect or (ii) would, or would reasonably be expected to, frustrate the purposes of this Agreement, including by preventing the consummation of an Acceptable DM Liquidation;

(f) give the Debtors prior notice of any report, motion, application, summons, petition or other pleading concerning this Agreement or any of the matters contemplated hereby that is filed on behalf of FTX DM with any court in The Bahamas;

(g) facilitate the Debtors' appearance, attendance and participation in any and all proceedings before any court in The Bahamas that concerns this Agreement or any of the matters contemplated hereby; and

(h) not file any motion, application, summons, petition, or pleading (or support any motion, application, summons, petition, or pleading filed by any other Person) with the Bahamas Court that, in whole or in part, is materially inconsistent with this Agreement or an Acceptable DM Liquidation.

Section 4.02 Debtors' Commitments. During the Agreement Effective Period, the Debtors shall use commercially reasonably efforts to:

(a) support FTX DM's efforts in obtaining the Bahamas Approval Orders;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the Global Settlement, to support and take all steps reasonably necessary and desirable to address any such impediment;

(c) not object to, delay, impede, or take any other action to interfere with (i) the Acceptable DM Liquidation or (ii) any motion, application or other pleading or document filed by FTX DM in the Bahamas Court that is not inconsistent with this Agreement;

(d) not take or agree to take any action to support or facilitate in any manner a liquidation other than an Acceptable DM Liquidation; and

(e) not file any motion or pleading (or support any motion, application, summons, petition, or pleading filed by any other Person) with the Bahamas Court that, in whole or in part, is materially inconsistent with this Agreement.

Article V. Claims, Distributions and Inter-Estate Funding

Section 5.01 The Bahamas Bar Date. FTX DM shall establish May 15, 2024, or such other date as the Parties may reasonably agree, as a bar date for Claims against FTX DM (the "Bahamas Bar Date"). Except as required under applicable Law, FTX DM shall not seek to move or alter the Bahamas Bar Date without the prior written consent of the Debtors, not to be unreasonably withheld.

Section 5.02 Responsibility for FTX.com Customer Entitlement Claims.

(a) Opt-In Election. In connection with the solicitation of an Acceptable Plan, the Parties shall provide each Dotcom Customer, other than Excluded Parties or the Dotcom Customer specified in the last sentence of Section 5.03(d)(v), the right to irrevocably elect by the Opt-In Deadline to have all (but not less than all) FTX.com Customer Entitlement Claims set forth in a Ballot in the Chapter 11 Cases or in a proof of debt in the DM Liquidation, as applicable, withdrawn with prejudice from the Chapter 11 Cases and administered, reconciled, valued, settled, adjudicated, resolved and satisfied in the DM Liquidation. Each Dotcom Customer may exercise the Opt-In Election either by election on its ballot in the Chapter 11 Cases or by executing and filing a proof of debt in the DM Liquidation containing a waiver of any such Dotcom Customer's Entitlement Claim against the Chapter 11 Debtors (an "Opt-In Election"). The applicable portions of such ballots, proof of debt and the related disclosures made by the Parties about the Opt-In Election shall be in form and substance reasonably satisfactory to each Party.

(b) Excluded Parties. Excluded Parties shall not be eligible to exercise the Opt-In Election. The Debtors shall provide FTX DM with an initial list of Excluded Parties by no later than the mailing of ballots for the Chapter 11 Plan. The Debtors may supplement or modify such list from time to time up to the thirtieth (30th) day following the Bahamas Bar Date, at which time the list of Excluded Parties shall be final and binding on both Parties.

(c) Allocation of Responsibility for FTX.com Customer Entitlement Claims. All FTX.com Customer Entitlement Claims whose holders have validly exercised the Opt-In Election prior to the Opt-In Deadline shall be administered, reconciled, valued, settled, adjudicated, resolved and satisfied in the DM Liquidation and disallowed in full in the Chapter 11 Cases. All other FTX.com Customer Entitlement Claims shall be administered, reconciled, valued, settled, adjudicated, resolved and satisfied in the Chapter 11 Cases and shall be disallowed in full in the DM Liquidation.

Section 5.03 Classification and Treatment in the DM Liquidation.

(a) Classification. Each Claim Admitted in the DM Liquidation shall be classified in accordance with this Agreement as either (i) a DM Non-Customer Claim, (ii) a DM Customer Entitlement Claim, (iii) a DM Excess Claim or (iv) a Claim for Administrative Expense.

(b) Treatment of DM Non-Customer Claims. Each holder of an Admitted DM Non-Customer Claim shall receive, in full and final satisfaction, settlement, release and discharge of and in exchange for its Admitted DM Non-Customer Claim, payment in cash according to the Laws governing the DM Liquidation in an amount equal to such holder's pro rata share of the DM Non-Customer Claims Pool; *provided* that any such holder shall not be entitled to receive a distribution in an amount greater than the total amount of its Admitted Claim. There shall be no other recovery for holders of DM Non-Customer Claims.

(c) DM Non-Customer Account. The DM Non-Customer Account shall receive no funding by FTX DM at any time other than funding upon the Final Settlement Effective Date in an amount equal to $15 million. The DM Non-Customer Account shall be the sole source of payment for DM Non-Customer Claims.

(d) Treatment of DM Customer Entitlement Claims.

(i) Subject to Section 5.03(d)(iv), each holder of an Admitted DM Customer Entitlement Claim shall receive, in full and final satisfaction, settlement, release and discharge of and in exchange for its Admitted DM Customer Entitlement Claim, distributions from FTX DM as set forth in this Section 5.03(d)(i). FTX DM shall make distributions on Eligible DM Customer Entitlement Claims and Ineligible DM Customer Entitlement Claims on the same distribution dates and on a ratable basis. Subject to there being sufficient DM Distributable Cash, the aggregate amount distributed, whether in cash or in kind, on all DM Customer Entitlement Claims (including both Eligible DM Customer Entitlement Claims and Ineligible Customer Entitlement Claims) on any distribution date shall equal the DM Customer Reference Amount for such distribution date.

(ii) Subject to Bahamas Court approval if necessary, FTX DM shall calculate the amount of a DM Customer Entitlement Claim to be equal to the fair market value of cash or Digital Assets on account at the FTX.com Exchange as of November 11, 2022; *provided* that Claims relating to the FTT token shall be valued at zero and treated as DM Excess Claims. FTX DM shall set the value of a Digital Asset at the U.S. Dollar

equivalent of the fair market value of such Digital Asset. FTX DM shall use commercially reasonable efforts to determine the fair market value of Digital Assets in a manner that is consistent with the valuation methodologies and processes adopted by the Debtors in consultation with FTX DM in the Chapter 11 Cases (as specified in the Plan Term Sheet).

(iii) The Debtors shall, at the request of FTX DM, take all commercially reasonable actions as may be reasonably appropriate or necessary to request that the Bankruptcy Court conduct one or more Joint Claims Hearings with the Bahamas Court.

(iv) FTX DM may request from time to time by notice to the Debtors that an otherwise Ineligible DM Customer Entitlement Claim be treated as an Eligible DM Customer Entitlement Claim in the event of bona fide discrepancies between mandatory allowance rules in the Chapter 11 Cases and the DM Liquidation. The Debtors shall consent to such request so long as such treatment does not increase the total amount of all Eligible DM Customer Entitlement Claims (taken together with all other requests pursuant to this Section 5.03(d)(iv)) by more than $75 million.

(v) In the event that the Debtors agree with the FTX.com Exchange Assets Buyer to offer holders of FTX.com Customer Entitlement Claims an opportunity to trade their claims or receive their distributions on a digital currency exchange operated by the FTX.com Exchange Assets Buyer, FTX DM shall, at the request of the Debtors and to the extent permitted under applicable Law, offer the same opportunity to holders of DM Customer Entitlement Claims on the same terms and conditions; *provided* that, notwithstanding anything to the contrary in this Agreement, to the extent that FTX DM is not permitted under applicable Law to offer such opportunity, all holders of FTX.com Customer Entitlement Claims that elect to trade their claims or receive their distributions on such digital currency exchange shall not be eligible to exercise the Opt-in Election.

(vi) To the extent permitted by applicable Law, FTX DM shall treat as DM Excess Claims any DM Customer Entitlement Claim held by a Bahamas Customer that has not Commenced KYC by the KYC Cut-off Date.

(e) Treatment of DM Excess Claims. No holder of a DM Excess Claim shall receive any distributions on account of its DM Excess Claim.

(f) Treatment of Administrative Expense Claims. Each holder of an agreed Administrative Expense Claim against FTX DM shall receive cash in an amount equal to the full unpaid amount of such Admitted Administrative Expense Claim.

Section 5.04 Claim Objections.

(a) The Parties shall use commercially reasonable efforts to consult and coordinate in connection with Claims objections in order to facilitate a consistent approach to the administration of the estates.

(b) FTX DM shall reject and, if applicable, contest any DM Excess Claim or any Claim held by an Excluded Party in consultation with the Debtors, and shall not settle such Claim or make any distribution to the holder of such Claim.

(c) FTX DM shall not Admit in the DM Liquidation any Ineligible DM Customer Entitlement Claim without reasonable advance notice to the Debtors and an adequate opportunity, if the Debtors so request, to be heard on the matter in the Bahamas Court.

Section 5.05 Settlement of Dotcom Customer Preference Actions.

(a) The Debtors shall offer certain Dotcom Customers the opportunity to settle avoidance actions relating to withdrawals off the FTX.com Exchange (each, a "Dotcom Customer Preference Action") consistent with the terms set forth in the Plan Term Sheet. The Debtors and FTX DM shall use commercially reasonable efforts to (i) make the same settlement offer to Dotcom Customers (the "Dotcom Customer Preference Offer") available in the Chapter 11 Cases in the DM Liquidation and (ii) to release the settled Recovery Actions belonging to the estates of the Debtors and FTX DM upon acceptance of the offer. FTX DM shall not make a Dotcom Customer Preference Offer (x) on terms more favorable than those offered in the Chapter 11 Plan or (y) in respect of any preference claim identified by the Debtors as an Excluded Preference Claim in accordance with the Plan Term Sheet.

(b) FTX DM shall not make any distribution on a DM Customer Entitlement Claim to a Dotcom Customer in respect of whom there is a Dotcom Customer Preference Action unless (i) the Dotcom Customer Preference Action has been settled on terms not more favorable to an eligible counterparty than as contemplated by the Dotcom Customer Preference Offer, (ii) the Debtors have consented or (iii) the distribution is required by Bahamas Law, in which case the applicable DM Customer Entitlement Claim (or such part of it as would have been subject to extinguishment or set-off by reason of a DM Customer Preference Action) shall be deemed an Ineligible DM Customer Claim.

(c) The Debtors shall manage the assertion, adjudication and settlement of a Dotcom Customer Preference Action to the extent such Dotcom Customer Preference Action is not a defense to a DM Customer Entitlement Claim, except to the extent Recovery Actions against the applicable defendant have been allocated to FTX DM pursuant to Section 2.02(a).

Section 5.06 Inter-Estate Funding.

(a) Debtor Funding Obligation.

(i) The Debtors agree to provide FTX DM with the Advance DM Loan as soon as reasonably practicable following the Initial Settlement Effective Date, but no later than January 29, 2024. The Debtors and FTX DM shall agree to the terms of the Advance DM Loan in advance of the time necessary for the Parties to seek approval or sanction, as applicable, of the Advance DM Loan in accordance with this Agreement. FTX DM shall apply the proceeds of the Allowed DM Loan solely to pay Administrative Expenses.

(ii) To the extent that, on any distribution date, the DM Customer Reference Amount exceeds DM Distributable Cash, the Debtors shall advance, from funds allocated to the Dotcom Customer Pool, cash to FTX DM to pay distributions to holders of DM Customer Entitlement Claims; *provided* that the Debtors shall have no obligation to advance funds to FTX DM to finance distributions by FTX DM unless (A) FTX DM is in compliance with this Agreement in all material respects and (B) the Debtors shall have received reasonable assurance that such funds will not be used, directly or indirectly, to pay DM Non-Customer Claims or DM Excess Claims.

(b) FTX DM Funding Obligation. To the extent that, on any distribution date, the DM Distributable Cash exceeds the DM Customer Reference Amount, FTX DM shall pay such excess to the Debtors for application pursuant to the Chapter 11 Plan, so long as the Debtors are in compliance with this Agreement in all material respects. In addition, to the extent that, on any distribution date or at any other time, the amount of DM Distributable Cash exceeds the amount necessary to pay all remaining DM Customer Entitlement Claims in accordance with this Agreement, FTX DM shall pay such excess to the Debtors for application pursuant to the Chapter 11 Plan.

(c) Administrative Expenses. To calculate the amounts due under Section 5.06(a) and Section 5.06(b) (as applicable), each Party shall take into account the actual and projected Administrative Expenses of the other estate; *provided* that each Party reserves the right to object to any Administrative Expenses incurred by the other Party's estate to the extent permitted under applicable Law before (i) the Bankruptcy Court, if for Administrative Expenses of the Debtors or (ii) the Bahamas Court, if for Administrative Expenses of FTX DM. Each Party may make additional advances to the other Party to pay Administrative Expenses as the other Party may agree from time to time.

Section 5.07 Distributions.

(a) The Debtors shall make distributions to holders of Trading Customer Entitlement Claims and other creditor Claims pursuant to the terms of the Acceptable Plan and in accordance with this Agreement. FTX DM shall make distributions to holders of DM Customer Entitlement Claims and other creditor Claims in the DM Liquidation in accordance with this Agreement. The Parties shall use commercially reasonable efforts to coordinate record dates and distributions, align procedures and policies, minimize confusion among Claims holders, and minimize administrative costs and expenses.

(b) This Agreement is premised on a centralized distribution process in which each Allowed or Admitted holder of an FTX.com Customer Entitlement Claim receives that same recovery as another similarly-situated holder. Therefore, the Chapter 11 Plan administrator or FTX DM may require any holder of a FTX.com Customer Entitlement Claim to submit satisfactory evidence that such holder has not requested or received compensation for the same losses underlying such claim in connection with the other estate's distributions, or any return of customer property procedures or other judicial or administrative proceeding (including any proceedings with respect to FTX Australia Pty Ltd., FTX Express Pty Ltd., FTX Turkey Teknoloji ve Ticaret Anonim Şirketi, FTX Europe AG, FTX EU Ltd., Quoine PTE Ltd. or FTX Japan K.K.), and may refrain from making distributions on such Claim until such time as

satisfactory evidence is obtained or appropriate arrangements are in place ensuring that no holder receives more than any other holder under the Plan after taking into account such other potential recoveries.

Section 5.08 Know-Your-Customer.

(a) FTX DM shall adopt in the DM Liquidation the same know-your-customer procedures utilized by the Debtors from time to time in the Chapter 11 Cases (the "KYC Procedures"), which shall be developed in consultation with the JOLs.

(b) Each Party agrees that it shall not (i) Allow or Admit any FTX.com Customer Entitlement Claim (including Eligible DM Customer Entitlement Claims and Ineligible DM Customer Entitlement Claims) unless the holder of such FTX.com Customer Entitlement Claim has Commenced KYC by the KYC Cut-off Date or (ii) pay any FTX.com Customer Entitlement Claim (including Eligible DM Customer Entitlement Claims and Ineligible DM Customer Entitlement Claims) unless and until the holder of such FTX.com Customer Entitlement Claim has satisfied the KYC Procedures in respect of itself and the Original Customer of such FTX.com Customer Entitlement Claim.

(c) Each Party agrees to share information with the other Party concerning the KYC Procedures and any supplementary know-your-customer process from time to time to the full extent permitted under applicable Law.

(d) In each of the Chapter 11 Cases and the DM Liquidation, except as required by applicable Law, no FTX.com Customer Entitlement Claim shall receive any distribution unless (i) the holder of such FTX.com Customer Entitlement Claims as of the KYC Cut-off Date shall have Commenced KYC by the KYC Cut-off Date and (ii) the holder of such FTX.com Customer Entitlement Claims as of the applicable distribution date shall have fully satisfied the then-applicable KYC Procedures.

Article VI. Representations and Warranties

The Debtors, and FTX DM severally, and not jointly, represent, warrant and covenant to the other Party that, as of the Execution Date:

(a) To the extent applicable, it is validly existing under the Laws of the state of its organization, and this Agreement, upon approval of the Bankruptcy Court or the Bahamas Court, as applicable, is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Law relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Bankruptcy Code, and the Bahamas Code, no consent or approval is required by any other Entity in order for it to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) to the extent applicable, the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material

respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association, or other constitutional documents; and

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement.

Article VII. Stay and Resolution of Adversary Proceeding

Section 7.01 Stay of Adversary Proceeding. Between the Execution Date and the dismissal of the Adversary Proceeding pursuant to Section 7.03, the Debtors, FTX DM and the JOLs (the "Adversary Proceeding Parties") shall procure that the Adversary Proceeding be voluntarily stayed and all actions held in abeyance pending the Bankruptcy Court's consideration of confirmation of the Chapter 11 Plan; *provided* that such stay may be terminated by either Party upon termination of this Agreement.

Section 7.02 Resolution of Adversary Proceeding. In full and final settlement and satisfaction of the Adversary Proceeding, the Adversary Proceeding Parties agree to settle on the Final Settlement Effective Date (a) all Claims and Causes of Action between the Parties that are asserted or could have been asserted in the Adversary Proceeding and all pending litigation between the Parties on the terms set forth in this Agreement, (b) all intercompany Claims between the Parties, except as provided otherwise in this Agreement, and (c) any potential objection either Party may have to such settlement on such terms.

Section 7.03 Withdrawal with Prejudice. No later than seven (7) days after the Final Settlement Effective Date, the Adversary Proceeding Parties shall withdraw with prejudice the Claims and counterclaims asserted in the Adversary Proceeding and seek to dismiss with prejudice any and all pending litigation between the Parties.

Article VIII. Termination

Section 8.01 Mutual Termination Events. Either Party may terminate this Agreement upon prior written notice to the other Party in accordance with Section 10.12 upon the occurrence of any of the following events:

(a) the breach in any material respect by the other Party of any of the covenants set forth in this Agreement that would have, or could reasonably be expected to have, an adverse effect on the Global Settlement or the transactions contemplated by this Agreement, which breach remains uncured for thirty (30) Business Days after the terminating Party transmits a written notice in accordance with Section 10.12 detailing any such breach;

(b) any representation or warranty in this Agreement made by the other Party shall have been untrue in any material respect when made or shall have become untrue in any material respect, and that would have, or could reasonably be expected to have, an adverse effect on the Global Settlement or the transactions contemplated by this Agreement, which remains uncured for thirty (30) Business Days after the terminating Party provides written notice of the

untrue nature of the representation or warranty in accordance with Section 10.12 detailing any such untruthfulness;

(c) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Debtor seeking an order (without the prior written consent of FTX DM), (i) converting one or more of the Chapter 11 Cases of a Debtor to a case under chapter 7 of the Bankruptcy Code or (ii) terminating exclusivity under section 1121 of the Bankruptcy Code;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling, judgment or order that (i) enjoins the consummation of a material portion of the Global Settlement or the transactions contemplated by this Agreement and (ii) either (1) such ruling, judgment or order has been issued at the request of the non-terminating Party in contravention of any obligations set forth in this Agreement or (2) remains in effect for ten (10) Business Days after the terminating Party transmits a written notice in accordance with Section 10.12 hereof detailing any such issuance;

(e) the Initial Settlement Effective Date has not occurred by January 29, 2024;

(f) the Confirmation Order is reversed or vacated, and the Bankruptcy Court does not enter a revised Confirmation Order reasonably acceptable to the Parties within ten (10) Business Days;

(g) any of the Bahamas Approval Orders is reversed or vacated, and the Bahamas Court does not grant a revised Bahamas Approval Order or revised Bahamas Approval Orders (as the case may be) reasonably acceptable to the Parties within ten (10) Business Days;

(h) any of the Chapter 11 Approval Orders is reversed or vacated, and the Bankruptcy Court does not enter a revised Chapter 11 Approval Order or revised Chapter 11 Approval Orders (as the case may be) reasonably acceptable to the Parties within ten (10) Business Days;

(i) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling, judgment or order that an Acceptable DM Liquidation is stayed or enjoined; or

(j) the Final Settlement Effective Date has not occurred by September 1, 2024.

Section 8.02 Effect of Termination. Upon the occurrence of a Termination Date, other than as provided by Section 10.18, this Agreement shall be of no further force and effect and each Party shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or Causes of Action. Nothing in this Agreement shall be construed as prohibiting either Party from contesting whether any such termination is in accordance with the terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date.

Except as expressly provided in this Agreement, nothing in this Agreement is intended to, or does, in any manner waive, limit, impair, or restrict any right of any Party or the ability of any Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its Claims against the other Party. No purported termination of this Agreement shall be effective under this Section 8.02 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement. Notwithstanding the foregoing or anything herein to the contrary, no Party may exercise any of its termination rights as set forth in Section 8.01 if such Party has failed to perform or comply in all material respects with the terms and conditions of this Agreement unless such failure to perform or comply arises as a result of the other Party's actions or inactions or would not otherwise give rise to a termination event in favor of the other Party. Nothing herein, including termination of this Agreement, shall be construed as a release or waiver of any claims arising out of, resulting from or related to a breach of this Agreement by any Party.

Article IX. Releases

Section 9.01 Mutual Releases. Subject to the occurrence of, and effective upon and after, the Final Settlement Effective Date, the Debtors, on the one hand, and FTX DM, on the other hand, on behalf of themselves, and each and all of their and their respective present and future officers, directors, agents, executors, administrators, provisional liquidators, liquidators, conservators, predecessors, successors and assigns, excluding any Excluded Party (all such releasing persons and entities collectively, the "Releasing Parties"), hereby fully, unconditionally and irrevocably release, relieve, waive, relinquish, remise, acquit and forever discharge each other and their respective present and future officers, directors, agents, executors, administrators, provisional liquidators, liquidators, conservators, predecessors, successors and assigns, excluding any Excluded Party (all such released persons and entities collectively, the "Released Parties") from, against, and in respect of any and all present and future Claims, cross-claims, counterclaims, third-party claims, demands, liabilities, obligations, debts, liens, damages, losses, costs, expenses, controversies, actions, rights, suits, assessments, penalties, charges, indemnities, guaranties, promises, commitments, or causes of action of whatsoever nature, whether based in contract, tort or otherwise, whether in law or equity and whether direct or indirect, known or unknown, asserted or unasserted, foreseen or unforeseen, fixed or contingent, that such Party may have or may have against any other Party since the beginning of time, under, arising out of or in connection with the Global Settlement or any other Claims that could be asserted, including any right to claim indemnification or an award of attorneys' fees or other costs and expenses incurred in, or in connection with the Global Settlement, in all cases other than as otherwise provided in this Agreement.

Section 9.02 Exceptions to Mutual Releases. Notwithstanding any other provision of this Agreement, the Parties' respective releases do not affect their respective obligations under this Agreement, the Parties' respective rights to bring any Claims or other Causes of Action arising out of or in connection with a breach of this Agreement.

Section 9.03 Incorporation. FTX DM shall perform such acts as may be necessary to effectuate and give full force and effect of the releases set forth in this Article IX in The Bahamas. The Debtors shall incorporate the releases set forth in this Article IX in the Acceptable Plan.

Article X. Miscellaneous

Section 10.01 Acknowledgements. Notwithstanding any other provision of this Agreement, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

Section 10.02 Amendment and Waivers. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties.

Section 10.03 Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signature pages, and schedules attached to this Agreement is expressly incorporated into and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules attached to this Agreement) and the exhibits, annexes, and schedules attached to this Agreement, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

Section 10.04 Further Assurances. Subject to the other terms and conditions of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters specified in this Agreement, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court or the Bahamas Court, from time to time, to effectuate the Global Settlement, the releases set forth in Section 9.01 and any transaction contemplated by this Agreement, as applicable.

Section 10.05 Complete Agreement. Except as otherwise explicitly provided in this Agreement, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Existing Confidentiality Arrangement. The Parties acknowledge and agree that they are not relying on any representations or warranties other than as set forth in this Agreement.

Section 10.06 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 10.07 Dispute Resolution. Each Party agrees that it shall not initiate any action or proceeding in any court or tribunal in respect of any claim arising out of or related to this Agreement without reasonable advance notice and consultation with the other Party. Each Party to this Agreement agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement in accordance with the cross-border dispute resolution protocol attached as Exhibit D hereto.

Section 10.08 TRIAL BY JURY WAIVER. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN

ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

Section 10.09 Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each Person executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

Section 10.10 Rules of Construction. This Agreement is the product of negotiations among the Debtors and FTX DM, and in the enforcement or interpretation of this Agreement, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion of this Agreement, shall not be effective in regard to the interpretation of this Agreement. The Debtors and FTX DM were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

Section 10.11 Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable, inure for the benefit of the Released Parties in Section 9.01. Other than with respect to Section 9.01, there are no third-party beneficiaries under this Agreement, and, except as set forth in this Agreement, the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other Entity.

Section 10.12 Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to the Debtors, to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Andrew G. Dietderich, James, L. Bromley, Brian D. Glueckstein and Alexa J. Kranzley
E-mail address: dietdericha@sullcrom.com, bromleyj@sullcrom.com, gluecksteinb@sullcrom.com, and kranzleya@sullcrom.com

(b) if to FTX DM, to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: J. Christopher Shore, Brian Pfeiffer, Jason Zakia and Brett Bakemeyer

E-mail address: cshore@whitecase.com, bpfeiffer@whitecase.com, jason.zakia@whitecase.com, and brett.bakemeyer@whitecase.com

Lennox Paton
3 Bayside Executive Park
West Bay Street & Blake Road
N-4875
Nassau, The Bahamas
Attention: Sophia Rolle-Kapousouzoglou, Marco Turnquest
E-mail address: srolle@lennoxpaton.com; mturnquest@lennoxpaton.com

Any notice given by delivery, mail, or courier shall be effective when received.

Section 10.13 Admissibility. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating to this Agreement shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

Section 10.14 Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

Section 10.15 Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

Section 10.16 Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

Section 10.17 Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to, as applicable, the Debtors and FTX DM, submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

Section 10.18 Survival. Except as expressly provided herein, Section 10.05 (*Complete Agreement*), Section 10.06 (*Governing Law*), Section 10.07 (*Dispute Resolution*), Section 10.11 (*Successors and Assigns*), Section 10.12 (*Notices*), Section 10.13

(*Admissibility/FRE 408*), and Section 10.15 (*Severability and Construction*) shall survive any termination of this Agreement.

Section 10.19 Effectiveness. This Agreement shall become effective on the Initial Settlement Effective Date and shall be effective during the Agreement Effective Period.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Execution Date.

FTX TRADING LTD., FTX PROPERTY HOLDINGS LTD., WEST REALM SHIRES INC., ALAMEDA RESEARCH LLC, and CLIFTON BAY INVESTMENTS, for themselves and on behalf of their affiliated debtors and debtors-in-possession

By _____
Name: John J. Ray III
Title: Chief Executive Officer

FTX Digital Markets Ltd. – In Liquidation

By _____

Name: Brian Simms, KC
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____

Name: Kevin Cambridge
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____

Name: Peter Greaves
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

Exhibit A

DOJ Seized Accounts

Bank	Last 4 Digits of Account Number
Farmington State Bank d/b/a Moonstone Bank	2685
Farmington State Bank d/b/a Moonstone Bank	2825
Silvergate Bank	2549
Silvergate Bank	2556
Silvergate Bank	2564
Silvergate Bank	0036
Silvergate Bank	0037

Exhibit B

List of Specified Jurisdictions

1. Antigua and Barbuda
2. The Bahamas
3. Barbados
4. BVI
5. Cayman Islands
6. Dominica
7. Gibraltar
8. Hong Kong
9. Jamaica
10. Saint Lucia
11. St. Kitts and Nevis
12. St. Vincent and the Grenadines
13. Trinidad and Tobago
14. United Kingdom
15. Isle of Man
16. Anguilla
17. Bermuda
18. Turks and Caicos Islands
19. Jersey
20. Guernsey
21. Aruba
22. Cuba
23. Dominican Republic
24. Haiti
25. Martinique

Exhibit C

Stipulated DM Property – Allocation Upon Final Settlement Effective Date

1. An amount in cash to be transferred by the Debtors to FTX DM equal to $78 million *minus*, in accordance with the terms of the Advance DM Loan, the amount equal to the outstanding principal amount of the Advance DM Loan and accrued interest thereon as of the Settlement Effective Date

2. Any and all DOJ Seized Funds that may be released by the DOJ

3. All proceeds from the Stipulated PropCo Claim

4. All cash currently held by FTX DM

5. All licenses and registrations held by FTX DM under the Digital Assets and Registered Exchanges Act enacted by the Parliament of The Bahamas

6. All DM-Controlled Recovery Actions and all the proceeds thereof

7. FTX DM's other Claims and Causes of Action against third parties arising out of non-Dotcom Customer relationships, other than any action against any Excluded Party

8. All of FTX DM's rights under this Agreement, including the right to receive payments from the Debtors thereunder

9. The real property commonly known as "Blue Water", Lot A, Old Fort Bay, Nassau, New Providence, The Bahamas.

10. All the proceeds of Claims against Sam Bankman-Fried, Gary Wang, Nishad Singh or any other Person agreed between the Parties by agreement between counsel to each Party conveyed in writing (including electronic mail) between such counsel that are related to the real properties located in The Bahamas that were purchased in such individual's name; *provided* that such Claims shall constitute Debtor-Controlled Recovery Actions.

11. All Claims against any Person agreed between the Parties by agreement between counsel to each Party conveyed in writing (including electronic mail) between such counsel.

12. Other miscellaneous assets that are not real estate assets that are physically located in The Bahamas and not in the name of a Debtor (or which the Debtors provide prior written consent to the transfer to FTX DM), except that the Digital Assets held by the SCB shall constitute Stipulated Debtors Property.

13. All proceeds from the Fenwick Retainer Receivable.

14. All proceeds from accounts or assets (other than Digital Assets) in the name of FTX DM.

Exhibit D
Dispute Resolution Protocol

1. Definitions. Capitalized terms used but not defined herein have the meaning set forth in the Global Settlement Agreement, dated as of December 19, 2023 (the "GSA"), by and among the Debtors and FTX DM acting by the JOLs as agents and without personal liability. The following terms shall have the following definitions:

"Covered Agreement" means the GSA, the Properties Exclusive Sales Agency Agreement, the Advance DM Loan, and any other agreements, consents, certificates, amendments, assignments, or instruments in connection therewith or that otherwise expressly incorporate the terms of this Protocol (as defined below).

"JIN Guidelines" mean the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network in October 2016 as reflected in Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 9029-2.

"Plan Administrator" means, (a) if prior to the Plan Effective Date, the Debtors' Chief Executive Officer and (b) if on or after the Plan Effective Date, the plan administrator appointed pursuant to the terms of the Chapter 11 Plan.

2. Exclusive Mechanism. The Parties shall resolve any dispute, controversy, issue, claim, breach, enforcement or disputed termination arising out of or relating to any Covered Agreement (each, a "Dispute") pursuant to the terms of this Dispute Resolution Protocol (the "Protocol"). The procedures set forth in this Protocol shall be the exclusive mechanism for resolving any Dispute that may arise from time to time between the Parties and no Party may initiate any action or proceeding in any court in respect of any Dispute without complying with this Protocol.

3. Negotiation and Consultation without Judicial Intervention. Either Party may give written notice to the other Party of the existence of a Dispute ("Dispute Notice"). Promptly following the delivery of a Dispute Notice, the Parties shall attempt in good faith to resolve any Dispute set forth in the Dispute Notice without judicial intervention by negotiation and consultation between themselves, including not fewer than one in person or virtual meeting between the Plan Administrator on behalf of the Debtors and the JOLs on behalf of FTX DM.

4. Concurrent Jurisdiction Procedure. In the event that such Dispute is not resolved by the Parties within twenty (20) days after the delivery of a Dispute Notice, either Party may give written notice to the other Party of its intent to seek judicial intervention to resolve the Dispute ("Judicial Intervention Notice"). Following the delivery of a Judicial Intervention Notice, the Parties shall negotiate in good faith a procedure to resolve the Dispute that involves the concurrent jurisdiction of the Bankruptcy Court and the Bahamas Court and is consistent with the JIN Guidelines and applicable Law ("Concurrent Jurisdiction Procedure").

5. Failure to Reach Agreement on Concurrent Jurisdiction Procedure. In the event that the Parties do not reach an agreement with respect to the terms of a Concurrent Jurisdiction Procedure within twenty (20) days after the delivery of a Judicial Intervention Notice, either Party may bring any action or proceeding in respect of any Dispute in the Bankruptcy Court or the Bahamas Court.

6. Interim Measures. Each Party shall take such actions as may be reasonably necessary to preserve the *status quo* with respect to the subject matter of any *bona fide* Dispute pending resolution and either Party may make an application to any court of competent jurisdiction seeking interim measures reasonably necessary to obtain court approval of such actions from time to time. Any Party that seeks interim measures pursuant to this section shall give prompt written notice to the other Party attaching copies of the application seeking interim measures and any supporting documents filed with the applicable court.

7. Notices. All notices given pursuant to this Protocol shall comply with Section 10.12 of the GSA.

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") is made and entered into as of December 19, 2023 (the "Execution Date"), by and among FTX Trading Ltd. (the "Lender") and FTX Digital Markets Ltd. (the "Borrower") acting by its joint official liquidators as agents and without personal liability. The Lender and the Borrower are collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the Parties have entered into the Global Settlement Agreement, dated as of the date hereof (the "GSA");

WHEREAS, under the GSA, the Lender has agreed to provide the Borrower with a loan and the Borrower has agreed to apply the proceeds of such loan solely to pay Administrative Expenses (as defined in the GSA); and

WHEREAS, subject to the terms and conditions set forth in this Agreement and the GSA, the Lender is willing to make a loan to the Borrower and the Borrower is willing to borrow and repay the loan and perform its other obligations hereunder;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

Article I. Definitions and Interpretation

Section 1.01 Definitions. Capitalized terms used but not defined herein have the meaning set forth in the GSA. The following terms shall have the following definitions:

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Approval Orders" has the meaning set forth in Section 2.03.

"Borrower" has the meaning set forth in the preamble to this Agreement.

"Commitment Amount" means $45 million; *provided* that if a Recovery Event has occurred on or prior to the date on which the Loan is made, such amount will be reduced by the sum of any proceeds received by or on behalf of the Borrower as result of such Recovery Event.

"Conditions Precedent" has the meaning set forth in Section 2.03.

"Default Interest Rate" means the rate equal to the Interest Rate *plus* an additional 2.00% per annum.

"Dispute Resolution Protocol" means the dispute resolution protocol attached to the GSA.

"Event of Default" has the meaning set forth in Section 5.01.

"Execution Date" has the meaning set forth in the preamble to this Agreement.

"Fenwick Retainer Receivable" means the receivable held by the Borrower against Fenwick & West LLP in respect of a retainer in the amount of $3.5 million.

"GSA" has the meaning set forth in the recitals to this Agreement.

"GSA Termination Date" means the date on which termination of the GSA is effective in accordance with Article VIII of the GSA.

"Interest Rate" means the rate equal to 7% per annum.

"Klarpay Blocked Funds" means the funds deposited in bank accounts nos. CH8083041111210000081 and CH9183041111110000061 at Klarpay AG in the name of the Borrower.

"Lender" has the meaning set forth in the preamble to this Agreement.

"Loan" has the meaning set forth in Section 2.01.

"Maturity Date" means the date that is the earliest of: (a) the date that is eighteen (18) months after the Execution Date; (b) the Final Settlement Effective Date; (c) the GSA Termination Date; and (d) the date on which the principal amount of the Loan outstanding has been declared, or automatically has become, due and payable (whether by acceleration, prepayment or otherwise).

"Nuevi Receivable" means the receivable held by the Borrower in respect of proceeds in an account with Nuevi Corporation.

"Party" has the meaning set forth in the preamble to this Agreement.

"Recovery Event" means any event, occurrence or proceeding that results in any proceeds being received by the Borrower in respect of a Specified Asset, including the release or refund of a Specified Asset to the Borrower, whether in total or in part.

"Specified Assets" means the Klarpay Blocked Funds, the Fenwick Retainer Receivable, and the Nuvei Receivable.

Section 1.02 Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and the neutral gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference in this Agreement to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) any capitalized terms in this Agreement that are defined with reference to another agreement are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date of this Agreement;

(e) if any payment, distribution, act or deadline under this Agreement is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date;

(f) unless otherwise specified, all references in this Agreement to "Sections" are references to Sections of this Agreement;

(g) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(h) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(i) the use of "include" or "including" is without limitation, whether stated or not;

(j) all references to "$" and "dollars" will be deemed to refer to United States currency unless otherwise specifically provided; and

(k) the word "or" shall not be exclusive.

Article II. Loan and Use of Proceeds

Section 2.01 Loan. Subject to the terms and conditions set forth herein, no later than five (5) Business Days after the satisfaction or waiver of the Conditions Precedent set forth in Section 2.03, the Lender shall make, or cause to be made, in a single advance, a loan (the "Loan") to the Borrower in a principal amount equal to the Commitment Amount by wire transfer of immediately available funds in Dollars into a bank account designated in writing by the Borrower no later than two (2) Business Days after the satisfaction or waiver of the Conditions Precedent.

Section 2.02 No Revolving Commitments. Any amounts borrowed by the Borrower under Section 2.01 and repaid or prepaid to the Lender may not be reborrowed by the Borrower.

Section 2.03 Conditions Precedent. The obligation of the Lender to make the Loan is subject to the satisfaction or waiver of the following conditions (collectively, the "Conditions Precedent"): (a) each of the Bankruptcy Court and the Bahamas Court shall have entered orders (collectively, the "Approval Orders"), in form and substance reasonably satisfactory to the Lender and the Borrower, approving this Agreement and the Loan; and (b) at the time of and immediately after giving effect to the borrowing of the Loan, all representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects on and as of the date of such borrowing before and after giving effect thereto.

Section 2.04 Use of Proceeds. The Borrower shall use the proceeds of the Loan solely to pay Administrative Expenses in accordance with the GSA.

Article III. Interest

Section 3.01 Interest. The Borrower shall pay interest to the Lender on the unpaid principal amount of the Loan at a rate per annum equal to the Interest Rate. Interest on the principal amount of the Loan shall accrue from and including the date on which the Loan is made until the date immediately prior to repayment in full, whether at maturity, by acceleration, prepayment or otherwise.

Section 3.02 Default Interest. If any amount payable by the Borrower under this Agreement (including principal of the Loan and accrued interest thereon) is not paid when due, whether at maturity, by acceleration, prepayment or otherwise, such amount shall thereafter bear interest at a rate per annum equal to the Default Interest Rate. All Default Interest shall be payable on demand.

Section 3.03 Computations of Interest. All computations of interest shall be made by the Lender on the basis of a year of 365 days. Each determination by the Lender of an interest amount hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

Article IV. Payments and Prepayments

Section 4.01 Payment of Principal and Interest at Maturity. The principal amount of the Loan outstanding and accrued interest thereon shall be due and payable on the Maturity Date.

Section 4.02 Satisfaction of the Loan on the Final Settlement Effective Date. If the Final Settlement Effective Date occurs, the Lender and the Borrower agree that the Lender shall satisfy the obligation of the Borrower to repay the Loan by setoff and reduction against any amount otherwise due to the Borrower under the GSA upon the Final Settlement Effective Date. Such repayment obligation of Lender to Borrower and setoff and reduction in this Section 4.02 shall be effective automatically upon the occurrence of the Final Settlement Effective Date and shall not require any action by either Party. The Lender agrees to provide written notice to the Borrower promptly (and in any event within three (3) Business Days) after any such setoff and reduction and include in such notice, the amount so setoff and the aggregate principal amount of the Loan outstanding after giving effect to such setoff and reduction; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 4.03 Voluntary Prepayment. The Borrower may, upon notice to the Lender, prepay any amount due under this Agreement at any time and from time to time, without premium or penalty, in whole or in part.

Section 4.04 Mandatory Prepayment. No later than five (5) Business Days after the date of receipt by or on behalf of the Borrower of any proceeds from any Recovery Event, the Borrower shall prepay or cause to be prepaid the Loan to the Lender in an aggregate amount equal to such proceeds. The Borrower shall notify the Lender in writing of any mandatory prepayment of Loan required to be made pursuant to this Section 4.04 no later than (2) Business Days prior to the date of such prepayment, specifying the date and amount of such prepayment; *provided* that the Lender and the Borrower agree that the Lender may satisfy the obligation of the Borrower to prepay the Loan by setoff and reduction against any amount otherwise due to the Borrower under the GSA on such date. The Lender agrees to provide written notice to the Borrower promptly (and in any event prior to the prepayment date) after any such setoff and reduction and include in such notice, the amount so setoff and the aggregate principal amount of the Loan outstanding after giving effect to such setoff and reduction; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 4.05 Application of Proceeds. If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal and interest then due hereunder, including in the event that the Borrower makes a prepayment pursuant to Section 4.03 or Section 4.04, such funds shall be applied (a) *first*, toward payment of interest then due hereunder and (b) *second*, toward payment of principal then due hereunder.

Section 4.06 Payments Generally. All payments to be made by the Borrower to the Lender hereunder shall be made to the Lender into a bank account designated in writing to the Borrower by the Lender. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars by wire transfer of immediately available funds.

Section 4.07 Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under this Agreement shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the discretion of the Lender) requires the deduction or withholding of any Tax, then the sum payable by the Borrower to the Lender shall be increased as necessary so that after such deduction or withholding has been made the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

Article V. Events of Default

Section 5.01 Events of Default. If any one or more of the following events (each, an "Event of Default") shall have occurred:

(a) the Borrower shall fail to pay the principal of, or any accrued interest on, the Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise;

(b) an Approval Order has been reversed or vacated, and the Bankruptcy Court or the Bahamas Court, as applicable, does not enter a revised Approval Order reasonably acceptable to the Lender within ten (10) Business Days; or

(c) any representation, warranty, or other statement of fact made or deemed made by or on behalf of the Borrower herein or in the GSA or any amendment or modification hereof or thereof or waiver hereunder or thereunder or in any certificate, document, report, financial statement, or other document furnished by or on behalf of the Borrower under or in connection with this Agreement, proves to have been false or misleading in any material respect on or as of the date made or deemed made;

then, in every such event and at any time thereafter during the continuance of such event, the Lender may, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) declare the principal of and any accrued interest on the Loan, and all other obligations owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and (ii) exercise any other rights and remedies available at Law or in equity, including as set forth in Section 5.02.

Section 5.02 Setoff Right. If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates (including PropCo) is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to setoff and apply any and all obligations now or hereafter owing by such Lender or Affiliate (including under the GSA and in respect of the Bahamas Properties) to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing to such Lender or Affiliate (including under this Agreement, the GSA and in respect of the Bahamas Properties) irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or the GSA and although such obligations of the Borrower may be contingent or unmatured. The rights of the Lender and its Affiliates under this Section 5.02 are in addition to other rights and remedies (including other rights of setoff) that the Lender or its Affiliates may have. The Lender agrees to provide written notice to the Borrower promptly (and in any event within three (3) Business Days) after any such setoff and application and include in such notice, the amount said setoff and the aggregate principal amount of the Loan outstanding after giving effect to such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Article VI. Representations and Warranties

The Lender and the Borrower, severally, and not jointly, represent, warrant and covenant to the other Party that, as of the Execution Date:

(a) to the extent applicable, it is validly existing under the Laws of the state of its organization, and this Agreement, upon approval of the Bankruptcy Court or the Bahamas

Court, as applicable, is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Law relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Bankruptcy Code, and the Bahamas Code, no consent or approval is required by any other Entity in order for it to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) to extent applicable, the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association, or other constitutional documents; and

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement.

Article VII. Miscellaneous

Section 7.01 Assignments. No Party may assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party.

Section 7.02 Amendment and Waivers. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties.

Section 7.03 Further Assurances. Subject to the other terms and conditions of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters specified in this Agreement, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court or the Bahamas Court, from time to time, to effectuate any transaction contemplated by this Agreement.

Section 7.04 Complete Agreement. Except as otherwise explicitly provided in this Agreement, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Existing Confidentiality Arrangement. The Parties acknowledge and agree that they are not relying on any representations or warranties other than as set forth in this Agreement.

Section 7.05 Governing Law. This Agreement is to be governed by and construed in accordance with the Laws of the State of New York without giving effect to its conflict of laws principles to the extent that the application of the Laws of another jurisdiction would be required thereby.

Section 7.06 Dispute Resolution. Each Party agrees that it shall not initiate any action or proceeding in any court or tribunal in respect of any claim arising out of or related to

this Agreement without reasonable advance notice and consultation with the other Party. Each Party to this Agreement agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement in accordance with the Dispute Resolution Protocol.

Section 7.07 TRIAL BY JURY WAIVER. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

Section 7.08 Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each Person executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

Section 7.09 Rules of Construction. This Agreement is the product of negotiations among the Lender and the Borrower, and in the enforcement or interpretation of this Agreement, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion of this Agreement, shall not be effective in regard to the interpretation of this Agreement. The Lender and the Borrower were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

Section 7.10 Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and, except as set forth in this Agreement, the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other Entity.

Section 7.11 Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to the Lender, to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Andrew G. Dietderich, James, L. Bromley, Brian D. Glueckstein and Alexa J. Kranzley
E-mail addresses: dietdericha@sullcrom.com, bromleyj@sullcrom.com, gluecksteinb@sullcrom.com and kranzleya@sullcrom.com

(b) if to the Borrower, to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: J. Christopher Shore, Brian Pfeiffer, Jason Zakia and Brett Bakemeyer
E-mail addresses: cshore@whitecase.com, bpfeiffer@whitecase.com, jason.zakia@whitecase.com, and brett.bakemeyer@whitecase.com

Lennox Paton
3 Bayside Executive Park
West Bay Street & Blake Road
N-4875
Nassau, The Bahamas
Attention: Sophia Rolle-Kapousouzoglou, Marco Turnquest
E-mail addresses: srolle@lennoxpaton.com; mturnquest@lennoxpaton.com

Any notice given by delivery, mail, or courier shall be effective when received.

Section 7.12 Admissibility. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating to this Agreement shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

Section 7.13 Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

Section 7.14 Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

Section 7.15 Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

Section 7.16 Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to, as applicable, the Lender and the Borrower, submitting and receiving such consent,

acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Execution Date.

FTX TRADING LTD.

By _____
Name: John J. Ray III
Title: Chief Executive Officer

FTX Digital Markets Ltd. – In Liquidation

By _____
Name: Brian Simms, KC
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____
Name: Kevin Cambridge
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____
Name: Peter Greaves
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

EXCLUSIVE SALES AGENCY AGREEMENT

This EXCLUSIVE SALES AGENCY AGREEMENT (the "Agreement"), dated December 19, 2023 (the "Execution Date"), is entered into by and among FTX Trading Ltd., FTX Property Holdings Ltd. ("PropCo" and, together with FTX Trading Ltd., the "Chapter 11 Parties") and FTX Digital Markets Ltd. ("FTX DM") acting by the JOLs (as defined below) as agents and without personal liability. The Chapter 11 Parties and FTX DM are collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the Parties have entered into the Global Settlement Agreement, dated as of the date hereof (the "GSA");

WHEREAS, the GSA provides for the prompt cash sale of the real estate owned by PropCo in The Bahamas free and clear of all claims and interests; and

WHEREAS, subject to the terms and conditions set forth herein and the GSA, the Parties have agreed to this Agreement;

NOW, **THEREFORE**, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

Article I. Definitions and Interpretation

Section 1.01 Definitions. Capitalized terms used but not defined herein shall have the meaning set forth in the GSA. The following terms shall have the following definitions:

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Agreement Effective Period" means the period from the Effective Date to the Termination Date.

"Bahamas Properties" shall mean all interests of PropCo in the real estate assets listed in Exhibit A to this Agreement and, where context admits, any part thereof.

"Chapter 11 Parties" has the meaning set forth in the preamble to this Agreement.

"Disposal" means, in respect of the Bahamas Properties, the entry into any agreement for and the grant or transfer of any freehold or leasehold interest in land or any equitable interest in the same, the grant of any legal or equitable easement, mortgage, security, charge, easement, restrictive covenant, exception, reservation or encumbrance affecting or otherwise in respect of any of the Bahamas Properties (and, "to Dispose" shall mean to make a Disposal).

"Dispute Resolution Protocol" means the dispute resolution protocol attached to the GSA.

"Effective Date" has the meaning set forth in Section 2.01.

"Escrow Account" means a segregated escrow account held by an escrow agent, mutually acceptable by both Parties, in accordance with the terms of an escrow agreement consistent with the terms of this Agreement and otherwise mutually acceptable by both Parties.

"Execution Date" has the meaning set forth in the preamble to this Agreement.

"FTX DM" has the meaning set forth in the preamble to this Agreement.

"FTX DM's Powers" means the powers granted to FTX DM under Article III and the Power of Attorney relating to FTX DM.

"GSA" has the meaning set forth in the recitals to this Agreement.

"Net Proceeds" has the meaning set forth in Section 6.02.

"Party" has the meaning set forth in the preamble to this Agreement.

"Power of Attorney" means a power of attorney in the form of the draft appended to this Agreement as Exhibit B.

"PropCo" has the meaning set forth in the preamble to this Agreement.

"Termination Date" means the date on which termination of this Agreement is effective in accordance with Article IX of this Agreement.

"U.S. Sale Order" means the order entered by the Bankruptcy Court authorizing PropCo's entry into this Agreement and approving the implementation of its terms.

Section 1.02 Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and the neutral gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference in this Agreement to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) any capitalized terms in this Agreement that are defined with reference to another agreement are defined with reference to such other agreement as of the date of this

Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date of this Agreement;

(e) if any payment, distribution, act or deadline under this Agreement is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date;

(f) unless otherwise specified, all references in this Agreement to "Articles" or "Sections" are references to Sections of this Agreement;

(g) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(h) captions and headings to Sections or groups of Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(i) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(j) the use of "include" or "including" is without limitation, whether stated or not;

(k) all references to "$" and "dollars" will be deemed to refer to United States currency unless otherwise specifically provided; and

(l) the word "or" shall not be exclusive.

Article II. Effective Date

Section 2.01 Effective Date. This Agreement shall become effective on the first date on which the Bahamas Approval Order and the U.S. Sale Order have been entered (such date, the "Effective Date").

Article III. Powers of Marketing and Sale

Section 3.01 PropCo Approval of Disposals. PropCo shall have the sole and exclusive right to, in its sole discretion, approve a Disposal of any of the Bahamas Properties to any Person and the entry into any agreement for any Disposal of any of the Bahamas Properties. Any purported Disposal of any of the Bahamas Properties or entry into any agreement for any Disposal of any of the Bahamas Properties without the express prior written approval of PropCo shall be null and void.

Section 3.02 Exclusive Agency. Subject to the terms and conditions of this Agreement, PropCo hereby appoints (and FTX Trading Ltd. consents to such appointment) FTX DM as PropCo's sole and exclusive agent with powers during the Agreement Effective Period to conduct the management, preparation for sale, marketing for sale and sale of the

Bahamas Properties and accordingly grants FTX DM full and exclusive powers, as its agent and on such terms and in such manner as FTX DM shall think fit, to:

(a) appoint and engage real estate agents to market the Bahamas Properties for sale;

(b) appoint and engage valuers, appraisers, surveyors, property consultants or experts, marketing consultants or experts, photographers, and other marketing or property professionals;

(c) take any steps, and appoint or engage any contractor or sub-agent, to manage, secure, maintain, repair, refurbish, develop, improve, partition, decorate, sub-divide or merge any or all of the Bahamas Properties;

(d) appoint and engage lawyers, attorneys or conveyancers in The Bahamas or any other jurisdiction to act on FTX DM's behalf (including as the exclusive agent of PropCo hereunder) in the exercise of FTX DM's Powers and in connection with any Disposal;

(e) procure insurance and pay related premiums;

(f) take any steps to enter into or terminate or otherwise bring to an end any lease or license or any other rights or alleged rights or interests of any Person in respect of any of the Bahamas Properties and otherwise to obtain or secure vacant possession and/or marketable title to the same with the prior written consent of PropCo, such consent not to be unreasonably withheld;

(g) bring or defend legal proceedings in the name of PropCo and compromise any such proceedings or any Claim of or against PropCo concerning title to or rights or interests or obligations over or in respect of any of the Bahamas Properties or any neighbouring or nearby property with the prior written consent of PropCo, such consent not to be unreasonably withheld;

(h) borrow money on the security of any of the Bahamas Properties for the purpose of defraying any costs, charges, losses or expenses (including Administrative Expenses) which amounts shall be incurred in the exercise of FTX DM's Powers and generally for the purposes thereof; *provided* that any such financing shall not be obtained without the prior written consent of PropCo, such consent not to be unreasonably withheld;

(i) elicit or encourage expressions of interest or bids for the Disposal of the Bahamas Properties;

(j) conduct negotiations with any potential purchaser or other interested Person for any Disposal of the Bahamas Properties;

(k) negotiate with any Person for any Disposal of the Bahamas Properties;

(l) grant, modify or discharge any easement, restrictive covenant, exception, reservation, encumbrance affecting or otherwise in respect of any of the Bahamas

Properties with the prior written consent of PropCo, such consent not to be unreasonably withheld;

(m) discharge out of the proceeds of any Disposal or otherwise any mortgage, charge, security or encumbrance over any of the Bahamas Properties;

(n) pay or otherwise discharge all Disposal-related Taxes or other charges or amounts owed by PropCo in respect of the Bahamas Property subject to Article VI; and

(o) take any other step incidental to the powers set out in this Section 3.02.

Section 3.03 FTX DM Disposal Recommendation. FTX DM may recommend that PropCo make a Disposal of any of the Bahamas Properties or enter into a binding agreement for any Disposal of the Bahamas Properties. In connection with each such recommendation, FTX DM shall provide PropCo copies of: (a) all offers received by the JOLs; (b) a broker price opinion including a comparative property sale analysis produced by a well-respected real estate broker; (c) any valuation reports available to the JOLs; and (d) any other information or documentation that PropCo may reasonably request. Following a recommendation by DM to PropCo in accordance with this Section 3.03, PropCo shall decide whether to approve to such recommended Disposal pursuant to Section 3.01.

Section 3.04 Power of Attorney. On the Effective Date, PropCo shall execute the Power of Attorney confirming and (to the extent necessary) conferring upon FTX DM all necessary powers and authorities to enter agreements for Disposals of the Bahamas Properties on behalf of PropCo after receipt of the requisite approval from PropCo pursuant to the terms of this Agreement, including Section 3.01 and Section 3.03. PropCo shall not exercise its right to revoke the Power of Attorney during the Agreement Effective Period; *provided* that PropCo may exercise the right to revoke the Power of Attorney with immediate effect if PropCo has terminated this Agreement in accordance with this Agreement. To the extent of any conflicts between the terms of this Agreement and the terms of the Power of Attorney, the terms of this Agreement shall control.

Section 3.05 Delegation. Subject to the prior consent of PropCo (such consent not to be unreasonably withheld), FTX DM is permitted to delegate any of the powers set forth in Section 3.02 to any other Person.

Article IV. FTX DM's Obligations and Limitations of Liability

Section 4.01 FTX DM's Obligations. FTX DM shall:

(a) act in good faith in exercising FTX DM's Powers;

(b) use reasonable endeavors to achieve a Disposal of all of the Bahamas Properties as soon as reasonably practicable;

(c) exercise reasonable care and skill in seeking to Dispose of the Bahamas Properties at the best reasonably obtainable market value. The standard of care and skill required shall be the same as that owed to a mortgagor by a mortgagee in possession of property exercising a power of sale as a matter of the law of The Bahamas; and

(d) in exercising FTX DM's Powers and in performing its obligations, be entitled to rely upon and follow the advice of appropriately qualified professional advisors in respect of matters within their ostensible areas of expertise and shall not be liable (to the greatest extent permitted by Law) for any loss or damage to PropCo arising from steps taken or not taken in reliance on such advice.

Section 4.02 Limitation of Liability. Neither FTX DM nor its officers or agents (including the JOLs) from time to time in exercising FTX DM's Powers and in performing its obligations under this Agreement shall be liable for any loss or damage to PropCo (whether directly, indirectly, derivatively or otherwise) arising by reason of act or omission carried out by or on their behalf save where caused by the gross negligence, willful default, fraud or dishonesty of FTX DM or its said officers or agents.

Section 4.03 Administrative Expenses. PropCo shall pay to FTX DM all Administrative Expenses incurred by FTX DM in respect of PropCo, including any liabilities, claims, or demands arising out of FTX DM's performance of this Agreement other than where FTX DM or the JOLs have acted with gross negligence, willful default, fraud or dishonesty.

Article V. Information Sharing and Consultation Between FTX DM and PropCo

Section 5.01 Information Sharing and Consultation. FTX DM shall: (a) respond to all written questions from the Chapter 11 Parties about the exercise of FTX DM's Powers promptly and in writing, and provide such documents as the Chapter 11 Parties may reasonably request in connection with any such written inquiries; and (b) as requested by the Chapter 11 Parties from time to time on reasonable notice, attend (by its representatives) virtual or in-person meetings with representatives of the Chapter 11 Parties to discuss the Bahamas Properties and/or the exercise of FTX DM's Powers.

Article VI. Application of Disposal Proceeds

Section 6.01 Waterfall. Subject to Section 6.02, the gross proceeds of a Disposal of a Bahamas Property shall be used in the following manner:

(a) *first*, to pay Disposal-related Taxes and other charges or amounts owed by PropCo in respect of the Bahamas Property subject to the Disposal payable in The Bahamas;

(b) *second*, to pay any reasonable, documented and customary real estate agent commissions related to the Disposal;

(c) *third*, to pay the Administrative Expenses of PropCo pursuant to applicable Law;

(d) *fourth*, to transfer to PropCo a total amount equal to the sum of the PropCo Ordinary Course Claims;

(e) *fifth*, to satisfy the Stipulated PropCo Claim; and

(f) *sixth*, to be distributed in accordance with the Acceptable Plan.

Section 6.02 Payments. Prior to the Final Settlement Effective Date, (a) any amounts allocated under clauses (a) through (d) of Section 6.01 shall be paid directly to their beneficiaries from the proceeds of a Disposal in the ordinary course and (b) any amounts allocated under clauses (e) and (f) of Section 6.01 (collectively, the "Net Proceeds") shall be held in the Escrow Account.

Section 6.03 Release on Final Settlement Effective Date. Upon the occurrence of the Final Settlement Effective Date, and in accordance with the agreement governing the Escrow Account, all Net Proceeds shall be released to FTX DM until satisfaction in full of the Stipulated PropCo Claim. After the Final Settlement Effective Date, any further proceeds of a Disposal shall be paid in accordance with Section 6.01.

Section 6.04 Termination. In the event that the GSA is terminated in accordance with its terms prior to the Final Settlement Effective Date, the Net Proceeds shall continue to be held in the Escrow Account pending: (a) agreement of alternative arrangements reasonably acceptable to the Parties regarding the ownership of the Net Proceeds; or (b) a decision by the Bankruptcy Court and the Bahamas Court after a hearing jointly conducted by both courts in accordance with the JIN Guidelines to determine the ownership of the Net Proceeds.

Article VII. Cooperation and Assurances

Section 7.01 Affirmative Covenant. Subject to the terms and conditions of this Agreement, each Party shall cooperate and use commercially reasonable efforts to assist the other Party in performing its obligations under this Agreement, which efforts shall include:

(a) providing any consents or authorizations the other Party reasonably requests be provided;

(b) executing any agreement or other document the other Party reasonably requests be executed; and

(c) providing all information and documents the other Party may reasonably request in connection with its obligations under functions under this Agreement (provided that no Party shall be obliged to share privileged materials with the other or share any information in violation of applicable Law or any confidentiality arrangement binding on the relevant Party at the Execution Date or at the time of such request).

Section 7.02 Negative Covenant. Neither Party shall take any steps of any nature, whether before or after the Effective Date, that (a) are inconsistent with this Agreement in any material respect, or (b) would, or would reasonably be expected to, frustrate the purposes of this Agreement (once it becomes effective, as the case may be).

Article VIII. Representations and Warranties

Each Party, severally, and not jointly, represents, warrants and covenants to the other Party that, as of the Execution Date:

(a) to extent applicable, it is validly existing under the Laws of the state and/or country of its organization, and this Agreement, upon approval of the Bankruptcy

Court and the Bahamas Court, is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Law relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Bankruptcy Code, and the Bahamas Code, no consent or approval is required by any other Entity in order for it to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) to extent applicable, the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association, or other constitutional documents; and

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement.

Article IX. Termination

Section 9.01 Automatic Termination. Unless terminated pursuant to Section 9.02, this Agreement shall terminate upon the Disposal of all the Bahamas Properties.

Section 9.02 Mutual Termination Events. Either Party may terminate this Agreement upon prior written notice to the other Party upon the occurrence of any of the following events:

(a) the breach in any material respect by the other Party of any term of this Agreement that would have, or could reasonably be expected to have, an adverse effect on this Agreement or the transactions contemplated by it, which breach remains uncured for thirty (30) Business Days after the terminating Party transmits a written notice in accordance with Section 10.10 detailing any such breach;

(b) if any representation or warranty in this Agreement made by the other Party shall have been untrue in any material respect when made or shall have become untrue in any material respect, and such untrue representation or warranty would have, or could reasonably be expected to have, an adverse effect on this Agreement or the transactions contemplated by it, which remains uncured for thirty (30) Business Days after the terminating Party provides notice of the untrue nature of the representation or warranty in accordance with Section 10.10 detailing any such untruthfulness;

(c) the grant or issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling, judgment or order that (i) enjoins the consummation of a material portion of this Agreement or the transactions contemplated by it and (ii) either (x) such ruling, judgment or order has been issued at the request of the non-terminating Party in contravention of any obligations set forth in this Agreement or (y) remains in effect for ten (10) Business Days after the

terminating Party transmits a written notice in accordance with Section 10.10 detailing any such grant or issuance;

(d) the Bahamas Approval Order is reversed or vacated, and the Bahamas Court does not grant a revised Bahamas Approval Order reasonably acceptable to the Parties within ten (10) Business Days of the original Bahamas Approval Order being reversed or vacated;

(e) the U.S. Sale Order is reversed or vacated, and the Bankruptcy Court does not enter a revised US Sale Order reasonably acceptable to the Parties within ten (10) Business Days of the original US Sale Order being reversed or vacated;

(f) the GSA is terminated.

Section 9.03 Effect of Termination. Upon the occurrence of a Termination Date, other than as provided by Section 9.04, this Agreement shall be of no further force and effect and each Party shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims. Nothing in this Agreement shall be construed as prohibiting either Party from contesting whether any such termination is in accordance with the terms hereof or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing in this Agreement is intended to, or does, in any manner waive, limit, impair, or restrict any right of any Party or the ability of any Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its Claims against the other Party. No purported termination of this Agreement shall be effective under this Section 9.03 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement. Notwithstanding the foregoing or anything herein to the contrary, no Party may exercise any of its termination rights as set forth in this Section 9.03 if such Party has failed to perform or comply in all material respects with the terms and conditions of this Agreement unless such failure to perform or comply arises as a result of the other Party's actions or inactions or would not otherwise give rise to a termination event in favor of the other Party. Nothing herein, including Termination of this Agreement, shall be construed as a release or waiver of any Claims or causes of action arising out of, resulting from or related to a breach of this Agreement by any Party.

Section 9.04 Survival. The following provisions (to the extent applicable) shall survive any termination of this Agreement: (a) Article I (*Definitions and Interpretation*); (b) Section 4.02 (*FTX DM's Obligations and Limitations of Liability*); (c) Article VI (*Application of Disposal Proceeds*); (d) Section 9.02 (*Mutual Termination Events*); and (e) Article X (*Miscellaneous*).

Article X. Miscellaneous

Section 10.01 Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this

Agreement, each Person executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

Section 10.02 Amendment and Waivers. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties.

Section 10.03 Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signature pages, and schedules attached to this Agreement is expressly incorporated into and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules attached to this Agreement) and the exhibits, annexes, and schedules attached to this Agreement, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

Section 10.04 Rules of Construction. This Agreement is the product of negotiations among the Chapter 11 Parties and FTX DM, and in the enforcement or interpretation of this Agreement, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion of this Agreement, shall not be effective in regard to the interpretation of this Agreement. Chapter 11 Parties and FTX DM were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

Section 10.05 Further Assurances. Subject to the other terms and conditions of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters specified in this Agreement, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court or the Bahamas Court, from time to time, to effectuate this Agreement and any transaction contemplated by this Agreement, as applicable.

Section 10.06 Complete Agreement. Except as otherwise explicitly provided in this Agreement, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Existing Confidentiality Arrangement. The Parties acknowledge and agree that they are not relying on any representations or warranties other than as set forth in this Agreement.

Section 10.07 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of The Bahamas without giving effect to its conflict of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 10.08 Dispute Resolution. Each Party agrees that it shall not initiate any action or proceeding in any court or tribunal in respect of any claim arising out of or related to this Agreement without reasonable advance notice and consultation with the other Party. Each Party to this Agreement agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement in accordance with the Dispute Resolution Protocol.

Section 10.09 Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and, except as set forth in this Agreement, the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other Entity.

Section 10.10 Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to the Chapter 11 Parties, to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004

Attention: Andrew G. Dietderich, James L. Bromley, Brian D. Glueckstein and Alexa J. Kranzley

E-mail address: dietdericha@sullcrom.com, bromleyj@sullcrom.com, gluecksteinb@sullcrom.com and kranzleya@sullcrom.com

with copy to:

Peter D. Maynard Counsel & Attorneys
Bay & Deveaux Streets
P.O. Box N-1000
Nassau, Bahamas

Attention: Peter D. Maynard KC, Jason T. Maynard and Colin Jupp

E-mail address: peter.maynard@maynardlaw.com, jason.maynard@maynardlaw.com and colin.jupp@maynardlaw.com

(b) if to FTX DM, to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020

Attention: J. Christopher Shore, Brian Pfeiffer, Jason Zakia and Brett Bakemeyer

E-mail address: cshore@whitecase.com, bpfeiffer@whitecase.com, jason.zakia@whitecase.com, and brett.bakemeyer@whitecase.com

Lennox Patton
3 Bayside Executive Park
West Bay Street & Blake Road
N-4875
Nassau, The Bahamas

Attention: Marco Turnquest, Sophia Rolle-Kapousouzoglou
E-mail address: mturnquest@lennoxpaton.com,
srolle@lennoxpaton.com

Any notice given by delivery, mail, or courier shall be effective when received.

Section 10.11 Admissibility. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating to this Agreement shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

Section 10.12 Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

Section 10.13 Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

Section 10.14 Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

Section 10.15 Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between U.S. counsel to, as applicable, the Chapter 11 Parties and FTX DM, submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Execution Date.

FTX TRADING LTD. AND FTX PROPERTY HOLDINGS LTD

By _____

Name: John J. Ray III
Title: Chief Executive Officer

[*Signature Page to Exclusive Sales Agency Agreement*]

FTX Digital Markets Ltd. – In Liquidation

By _____
Name: Brian Simms, KC
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____
Name: Kevin Cambridge
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____
Name: Peter Greaves
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

Exhibit A

The Bahamas Properties

Schedule 1: The Bahamas Properties

Name of Purchaser	Name of Vendor	Property Description	Property Location
FTX PROPERTY HOLDINGS LTD.	ALBANY LAND COMPANY, LTD.	Lot no. 44 in the Albany Subdivision	Albany Lot 44 (Conch Shack)
FTX PROPERTY HOLDINGS LTD.	ANY NAME IS FINE LIMITED	Albany Bldg. 10 Condominium Unit 4A (Charles)	Albany Marina Residences (Charles)
FTX PROPERTY HOLDINGS LTD. OR NOMINEE	PBM ALBANY LLC	Albany Bldg. 10 Condominium Unit 3B (Charles)	Albany Marina Residences (Charles)
FTX PROPERTY HOLDINGS LTD. OR ITS NOMINEE	GOLD BLOSSOM ESTATE LTD.	Albany Bldg. 10 Condominium Unit 5A (Charles)	Albany Marina Residences (Charles)
FTX PROPERTY HOLDINGS LTD.	ALBANY CONDOMINIUM, LTD.	Albany Bldg. 7 Condominium Unit 2C (Coral)	Albany Marina Residences (Coral)
FTX PROPERTY HOLDINGS LTD.	BRYSON ALDRICH-DECHAMBEAU	Albany Bldg. 3 Condominium Unit 1B (Cube)	Albany Marina Residences (Cube)
FTX PROPERTY HOLDINGS LTD. OR NOMINEE	LUMINA DOMUS HOLDINGS LIMITED	Albany Bldg. 9 Condominium Unit 1D (Gemini)	Albany Marina Residences (Gemini)
FTX PROPERTY HOLDINGS LTD.	ALBANY CONDOMINIUM, LTD.	Albany Bldg. 1 Condominium Unit 2A (Honeycomb)	Albany Marina Residences (Honeycomb)
FTX PROPERTY HOLDINGS LTD.	ALBANY CONDOMINIUM, LTD.	Albany Bldg. 1 Condominium Unit 3E (Honeycomb)	Albany Marina Residences (Honeycomb)
FTX PROPERTY HOLDINGS LTD.	MILOS RAONIC	Albany Bldg. 1 Condominium Unit 2C (Honeycomb)	Albany Marina Residences (Honeycomb)
FTX PROPERTY HOLDINGS LTD.	STAMFORD HOUSE LIMITED	Albany Bldg. 8 Condominium Unit 6 (Orchid Penthouse)	Albany Marina Residences (Orchid Penthouse)
FTX PROPERTY HOLDINGS LTD. OR ITS ASSIGNS	ALBANY CONDOMINIUM, LTD.	Albany Bldg. 8 Condominium Unit 3B (Orchid)	Albany Marina Residences (Orchid)

FTX PROPERTY HOLDINGS LTD. OR NOMINEE	DINO GLOBAL LTD.	Albany Bldg. 8 Condominium Unit 1A (Orchid)	Albany Marina Residences (Orchid)
FTX PROPERTY HOLDINGS LTD.	ALBANY CONDOMINIUM, LTD.	Albany Bldg. 4 Condominium Unit 3D (Tetris)	Albany Marina Residences (Tetris)
FTX PROPERTY HOLDINGS LTD.	HUSSAM SULTAN M. ALSHEHAIL & HAIFA M.A. ALSHEIKH	Albany Bldg. 4 Condominium Unit Duplex 2 (Tetris)	Albany Marina Residences (Tetris)
FTX PROPERTY HOLDINGS LTD. OR NOMINEE	3b TETRIS LTD.	Albany Bldg. 4 Condominium Unit 2E (Tetris)	Albany Marina Residences (Tetris)
FTX PROPERTY HOLDINGS LIMITED	Long Island Diamonds Limited	Blake Road	Blake Road
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 114	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 228	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 232	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 235	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 337	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 434	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (or its nominee or assignee)	Wynn Development Limited	Goldwynn Unit 436	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD.	DAVE DOHERTY	One Cable Beach Unit 207	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (OR ASSIGNS)	SAMCO BAHAMAS LTD.	One Cable Beach Unit 309	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (OR ASSIGNS)	JMK Investments Inc.	One Cable Beach Unit G12	Cable Beach, Nassau
FTX PROPERTY HOLDINGS LTD. (OR ASSIGNS)	Winchester Realty Ltd.	One Cable Beach Unit 603	Cable Beach, Nassau

FTX PROPERTY HOLDINGS LTD. (OR ASSIGNS)	Gregory L Curry and Gabriella A Curry	Old Fort Bay Lots 5A & 5B - Fincastle Island	Old Fort Bay, Nassau
FTX PROPERTY HOLDINGS LTD.	Ocean Terrace Ltd	Ocean Terrace	West Bay Street
FTX PROPERTY HOLDINGS LTD.	Bayside Estates Ltd	West Bay Street (fmrly. Bayside - Pictet)	West Bay Street (W. of Blake Road)
FTX PROPERTY HOLDINGS LTD.	Veridian Development Group Ltd and Veridian Corporate Center Association Ltd	Veridian Corporate Center #18, 30, 27, 26, 25, 24	Western Road, Lyford Cay
FTX PROPERTY HOLDINGS LTD.	Veridian Corporate Centre LLC	Veridian Corporate Center #23	Western Road, Lyford Cay
FTX PROPERTY HOLDINGS LTD.	Pineapple House Investments Ltd	Pineapple House	Western Road, Lyford Cay
FTX PROPERTY HOLDINGS LTD.	Veridian Development Group Ltd and Veridian Corporate Center Association Ltd	Veridian Corporate Center #1-17, 19-22, 28, 29	Western Road, Lyford Cay

COMMONWEALTH OF THE BAHAMAS
New Providence

THIS DEED OF **ASSIGNMENT** is made this 19th day of December, A.D. 2023 between **FTX PROPERTY HOLDINGS LTD.** a company incorporated under the laws of the Commonwealth of The Bahamas ("the Assignor") of the one part and **FTX DIGITAL MARKETS LTD. (in Official Liquidation)**, another incorporated company under the laws of the Commonwealth of The Bahamas ("the Assignee") of the other part. The Assignor and the Assignee are collectively referred as "the Parties."

WHEREAS:-

A. By the Agreements for Sale (hereinafter called "the Sale Agreements") dated the 22nd February 2022 made between Wynn Development Limited (as vendor) of the one part and the Assignor (as purchaser) of the other part, the vendor agreed to grant and convey to the Assignor the fee simple estate in possession of condominium units and chattels more particularly described in the Schedule hereto (hereinafter called "the Units").

B. Pursuant to a Winding Up Order of the Supreme Court of The Commonwealth ("the Bahamas Court") dated the 10th November, 2023 (hereinafter called "the Order") Brian Cecil Simms KC, Kevin G. Cambridge and Peter Greaves were appointed as Joint Official Liquidators ("JOLs") to carry out the winding up of the Assignee. Prior to the Order, from 10 November 2022 the Assignee was in Provisional Liquidation and the JOLs acted as Joint Provisional Liquidators ("JPLs").

C. The Parties are part of the FTX group of companies. The Assignee is in liquidation in the Bahamas. The Assignor, together with other companies in the FTX group of companies (except the Assignee) ("the Debtors") are subject to Chapter 11 proceedings before the United States Bankruptcy Court for the District of Delaware ("the US Bankruptcy Court").

D. On March 19, 2023, the Debtors commenced an adversary proceeding against the Assignee and the then JPLs in *Alameda Research LLC, et al.* v. *FTX Digital Markets Ltd., et al.*, Adv. Pro. No. 23-50145 (JTD) [D.I. 1119] ("the Adversary Proceeding") the Assignee and the JPLs disputed the Debtors' allegations and asserted counterclaims against the Debtors in the Adversary Proceeding;

E. The Assignee has advanced all purchase funds paid under the Sales Agreements. The issue as to the ownership of the Units was raised in the Adversary Proceeding with each party claiming beneficial ownership.

F. The Parties have entered into a certain Global Settlement Agreement ("GSA"), dated as of the date hereof, that provides *inter alia* for a joint procedure for dealing with claims of creditors against their respective estates and the distribution of assets (including disputed assets) between the estates to meet those claims. The implementation of those procedures is to be, on the terms of the GSA, subject to the occurrence of the "Final Settlement Effective

Date" (as defined in therein) following *inter alia* approval of the arrangements provided for by the GSA by The Bahamas Court and the US Bankruptcy Court.

G. Under the terms of the GSA the Assignee will oversee the sale of all properties in the Bahamas including the Units and distribute the proceeds to the creditors of both estates pursuant to the terms of the GSA.

H. The Parties have pursuant to the GSA entered into a certain Exclusive Sales Agency Agreement, dated as of 19th of December, 2023 ("the Agency Agreement"), pursuant to which the Assignor appointed the Assignee as its exclusive agent with powers during the term of the Agency Agreement to conduct the management, preparation for sale, and sale of the Bahamas Properties.

I. Any funds derived from the sale of the Units will be applied in accordance with the Agency Agreement.

J. The Assignee (acting by its JOLs and without personal liability) has accordingly requested the Assignor to assign the Sale Agreements and all rights and interests thereunder and over and in respect of the Units to the Assignee in the manner hereinafter provided so that the Assignee can hold the Units in trust for the benefit of the Assignor and subject to the terms of the GSA and the Agency Agreement upon these agreements becoming effective.

NOW THIS AGREEMENT WITNESSETH: -

1. The Assignor hereby assigns and otherwise transfers to the Assignee all rights, title and interest and obligations held by the Assignor in and to and in respect of the Sale Agreements and the Units and all remedies for enforcing the same and the Assignee agrees with the Assignor to perform and observe the covenants and conditions contained in the Sale Agreements and the Assignor agrees to indemnify the Assignee from all liability in respect thereof and the Units (save for where the Assignee has acted with gross negligence, willful default, fraud or dishonesty). The Assignee hereby accepts such assignment and agrees to hold the Units in trust for the benefit of the Assignor pursuant to the terms of that certain Declaration of Trust dated as of the date hereof.

2. The Assignee hereby assumes and agrees to perform all remaining obligations of the Assignor under the Agreement and agrees to indemnify and hold the Assignor harmless from any claim or demand resulting from non-performance by the Assignee save for where the Assignor acts with gross negligence, willful default, fraud or dishonesty.

3. This Agreement shall be governed by, construed and enforced in accordance with laws of the Commonwealth of The Bahamas.

4. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. The parties agree that this Agreement and its acceptance may be evidenced by

facsimile or electronic transmission and no objection shall be raised in any Court as to the enforceability of the Agreement so executed.

5. Capitalized terms and phrases used but not defined herein shall have the meanings set out in the Agency Agreement. This Agreement shall immediately and automatically terminate upon the end of the Agreement Effective Period for the Agency Agreement. To the extent of any conflicts between the Agency Agreement when effective and the terms of this Agreement, the terms of the Agency Agreement shall control.

6. Each Party agrees that it shall not initiate any action or proceeding in any court or tribunal in respect of any claim arising out of or related to this Agreement without reasonable advance notice and consultation with the other Party. Each Party to this Agreement agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement in accordance with the Dispute Resolution Protocol.

THE SCHEDULE HEREINBEFORE MENTIONED

ALL THAT Units Numbered 114, 228, 232, 235, 337, 434 and 436 of the condominium building to be called and known as "The Residences At GoldWynn" constructed on the condominium Parcel situate on Cable Beach, West Bay Street, New Providence, The Bahamas, and the Unit Entitlement appurtenant to the Units under the Declaration including the FF&E Package and all appurtenances including Parking Space and Storage Locker.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX PROPERTY HOLDINGS LTD.

By: John J. Ray III
Title: Chief Executive Officer

Witness

[*Signature Page to Assignment of Agreement*]

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX DIGITAL MARKETS LTD.
(In Official Liquidation)

By: Brian Cecil Simms KC (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

Witness

By: Kevin G. Cambridge (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

Witness

By: Peter Greaves (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

Witness

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX DIGITAL MARKETS LTD.
(In Official Liquidation)

By: Brian Cecil Simms KC (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

By: Kevin G. Cambridge (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

By: Peter Greaves (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX DIGITAL MARKETS LTD.
(In Official Liquidation)

_____
By: Brian Cecil Simms KC (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

_____
Witness

_____
By: Kevin G. Cambridge (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

_____
Witness

_____
By: Peter Greaves (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

_____
Witness

DECLARATION OF TRUST

IN RESPECT OF INTERESTS IN BAHAMIAN PROPERTIES

This deed ("the **Deed**") is dated 19 December 2023, and entered into between:

(1) **FTX Digital Markets Ltd (in Official Liquidation)** ("**FTX Digital**") acting by its joint official liquidators as agents and without personal liability;

(2) **Brian Simms KC**, acting in his capacity as a Joint Official Liquidator of FTX Digital and therefore as an agent without personal liability;

(3) **Kevin Cambridge**, acting in his capacity as a Joint Official Liquidator of FTX Digital and therefore as an agent of FTX Digital and without personal liability;

(4) **Peter Greaves**, acting in his capacity as a Joint Official Liquidator of FTX Digital and therefore as an agent of FTX Digital and without personal liability (together with Brian Simms KC and Kevin Cambridge, "the **JOLs**"); and

(5) **FTX Property Holdings Limited**, a company incorporated under the laws of The Bahamas ("**PropCo**" and, together with FTX Digital, "the **Parties**").

WHEREAS:

(i) On or around 22 February 2022 PropCo entered into (as purchaser) certain Sale Agreements ("the **SPAs**") with Wynn Development Ltd. ("**Wynn**") (as vendor) for, in each case, the purchase of residential condominium units (including associated parking spaces, storage lockers, and the "Unit Entitlement" appurtenant to that unit as defined under the SPAs) at a condominium building development to be known as "the Residences at GoldWynn" located at Cable Beach, West Bay Street, New Providence. The said units (collectively, together with their associated parking spaces, storage lockers and "Unit Entitlements", "the **Units**"):

a. Unit 114
b. Unit 228
c. Unit 232
d. Unit 235
e. Unit 337
f. Unit 434
g. Unit 436

(ii) Under the terms of the SPAs, PropCo is entitled to nominate another party to complete the acquisition of the Units. PropCo agrees under this Deed before the date for final completion to nominate FTX Digital acting by its joint official liquidators as agents and without personal liability as the completing party.

(iii) The Parties entered into a certain Deed of Assignment dated as of 19 of December, 2023 ("the **Assignment**"), pursuant to which PropCo assigned the SPAs and all rights and interests thereunder and over and in respect of the Units to FTX Digital.

(iv) FTX Digital, acting by its joint official liquidators as agents and without personal liability, is to utilise funds in the FTX Digital estate to fund the completion costs.

(v) The Parties have entered into a certain Global Settlement Agreement, dated as of the date hereof, that provides *inter alia* for a joint procedure for dealing with claims of creditors against their respective estates and the distribution of assets (including disputed assets) between the estates to meet those claims. The implementation of those procedures is to be, on the terms of the Global Settlement Agreement, subject to the occurrence of the "Final Settlement Effective Date" (as defined in therein) following *inter alia* approval of the arrangements provided for by the Global Settlement Agreement by the Supreme Court of The Commonwealth of The Bahamas and the U.S. Bankruptcy Court for the District of Delaware.

(vi) The Parties have entered into a certain Exclusive Sales Agency Agreement, dated as of the date hereof ("the **Agency Agreement**"), pursuant to which the PropCo appointed FTX Digital (acting by its joint official liquidators) as PropCo's exclusive agent with powers during the term of the Agency Agreement to conduct the management, preparation for sale, and sale of the Bahamas Properties.

IT IS DECLARED AND AGREED THAT:

1. FTX Digital, acting by its joint official liquidators as agents and without personal liability, shall hold the Units (upon the completion of their purchase) on trust as trustee for the benefit of PropCo on the following terms:

   (i) FTX Digital, acting by its joint official liquidators as agents and without personal liability, shall have all powers, as trustee, in respect of the Units as FTX Digital has, as agent, in respect of the "Bahamas Properties" (as defined in the Agency Agreement) under the Agency Agreement;

(ii) the exercise of the FTX Digital's powers as trustee shall be subject to the same restrictions as FTX Digital's powers as agent under the Agency Agreement;

(iii) the gross proceeds of Disposition of the Units shall be used and held in the manner set forth in Article VI of the Agency Agreement (but always subject to the JOLs' and FTX Digital's rights of reimbursement, indemnity and security at Clauses 2 and 4 below).

2. FTX Digital, acting by its joint official liquidators as agents and without personal liability, shall be entitled (and without prejudice to any further or additional rights given to them under the Agency Agreement) to:

2.1. reimbursement and an indemnity from the assets held on trust pursuant to Clause 1 above for all of their costs, reasonable, documented and out-of-pocket expenses or liabilities reasonably incurred by reason or in connection with their acquisition of the Units, arrangements under this Deed or the administration of the trusts hereof.

2.2. a charge over the Units (in priority to all other charges not currently in existence) in respect of the rights under Clause 2.1.

3. FTX Digital, acting by its joint official liquidators as agents and without personal liability, in the performance of its obligations under this agreement, and to the greatest extent permissible in law, shall not be liable for any loss or damage to the other Parties arising by reason of act or omission carried out by or on its behalf save where caused by its gross negligence, willful default or dishonesty.

4. The parties recognise and agree that:

4.1. FTX Digital has, as trustee, and nothing in this Deed is to be taken as limiting or restricting, all powers and rights and protections afforded to trustees of land under The Bahamas' Trustee Act; and

4.2. The JOLs are entitled to charge reasonable, documented and customary professional fees based on the rates applicable to their roles as joint official liquidators of FTX Digital, as approved by the Bahamas Court from time-to-time in FTX Digital's liquidation in the performance of their duties in connection with the exercise by FTX Digital of its powers and rights as trustee.

5. This Deed is to be governed by and construed in accordance with the laws of The Bahamas.

6. Each Party agrees that it shall not initiate any action or proceeding in any court or tribunal in respect of any claim arising out of or related to this Deed without reasonable advance notice and consultation with the other Party. Each Party to this Deed agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Deed in accordance with the Dispute Resolution Protocol.

7. This Deed may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. The Parties agree that this Deed and its acceptance may be evidenced by facsimile or electronic transmission and no objection shall be raised in any Court as to the enforceability of the Deed so executed.

8. This Deed shall terminate upon the termination of the Agency Agreement, in which case the Trustee shall promptly transfer to PropCo all rights and interests under the SPAs and over and in respect of the Units that the FTX Digital still holds in the Units hereunder upon PropCo reimbursing to FTX Digital all costs and expenses owed by PropCo to FTX Digital hereunder.

9. Capitalized terms and phrases used but not defined herein shall have the meanings set out in the Agency Agreement. To the extent of any conflicts between the Agency Agreement and the terms of this Deed, the terms of the Agency Agreement once effective shall control.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

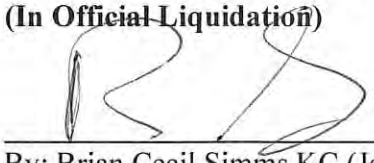
FTX PROPERTY HOLDINGS LTD.

By: John J. Ray III
Its: Chief Executive Officer

Witness

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX DIGITAL MARKETS LTD.
(In Official Liquidation)



By: Brian Cecil Simms KC (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

Witness

By: Kevin G. Cambridge (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

Witness

By: Peter Greaves (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
of FTX Digital Markets Ltd as an agent
without personal liability

Witness

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX DIGITAL MARKETS LTD.
(In Official Liquidation)

By: Brian Cecil Simms KC (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

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By: Peter Greaves (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

Witness

IN WITNESS WHEREOF, the parties have hereunto set their respective hands on the day and year set forth.

FTX DIGITAL MARKETS LTD.
(In Official Liquidation)

By: Brian Cecil Simms KC (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

By: Kevin G. Cambridge (Joint Official Liquidator)

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By: Peter Greaves (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator of FTX Digital Markets Ltd as an agent without personal liability

GrahamThompson
Attorneys

Sassoon House
Shirley Street & Victoria Avenue
P.O. Box N-272
Nassau, Bahamas
T 242-322-4130

Lyford Cay Drive
P.O. Box N-272
Lyford Cay, Nassau, Bahamas
T 242-362-4020

Client No. N04957/031

5th December, 2023

Mr. Clement T. Maynard III
Clement T. Maynard & Company
G.K. Symonette Building, Shirley Street,
Nassau, The Bahamas
Email: clem@clementmaynard.com

Dear Mr. Maynard,

Re: Wynn Development Ltd. to FTX Property Holdings Ltd.
Sale and Purchase of Units 114, 228, 232, 235, 337, 434 and 436,
Residences At GoldWynn Condominium, West Bay Street, NP, Bahamas

Wynn Development Ltd. to Weiyi Xia
Sale and Purchase of Unit 113, Residences At GoldWynn Condominium,
West Bay Street, NP, Bahamas

We write in respect of the captioned pending transactions and further to our email correspondence of 3rd May last relating to the matters.

You would be aware that Sale Agreements dated 22nd February, 2022 and 4th March, 2022 (the Sale Agreements) were made between the Wynn Development Ltd. (the Vendor) and FTX Property Holdings Ltd. and Weiyi Xia respectively (the Purchasers) relating to the construction and sale of the captioned eight condominium units (the Units) in the 'Residences At GoldWynn' development project at Cable Beach, Nassau, Bahamas and related furniture package for each Unit (FFE Packages).

We note that in Section 6 of each of the Sale Agreements it was provided that (i) the Vendor shall send each of the Purchasers written notice setting forth the closing date for the sale of the respective unit under the contract (the Closing Notices), and (ii) the completion of the sale of the Unit would be completed 14 days after the fulfillment of the last of certain conditions. We note that such notice was formally provided in writing on 4th November, 2022 and that related draft closing documents were provided on 11th November, 2022.

More than a year has now elapsed since such notices and drafts were provided in accordance with the Sale Agreement, and the Units have been fully completed and furnished in accordance with the Sale Agreements.

Accordingly, the Vendor is ready able and willing to complete the pending sale transaction and we are instructed by the Vendor to HEREBY GIVE YOU NOTICE THAT:-

(i) Section 16.1 of the Sale Agreement provides the following:

- *Failure of Purchaser to make any Stage Payments. In the event the Purchaser fails to make any Stage Payments in the amounts and on the dates as set forth herein, or within Ten (10) Business Days of notice in writing that such respective Stage Payment is due and payable, the Purchaser shall be in default under this Agreement and the Vendor shall have the right, but not the obligation, to terminate this Agreement, subject to notice and opportunity to cure set forth in Clause 16.5 hereof and to retain the Deposit and all Stage Payments as liquidated damages in accordance with and subject to the limitations of Clause 16.6 hereof.*

(ii) Section 16.2 of the Sale Agreement provides the following:

- ***Purchaser's Default. If the Purchaser fails to perform any of the Purchaser's*** *obligations hereunder as and when due, the Purchaser acknowledges the Vendor will be materially harmed due to, among other things, additional expenses which will be incurred by the Vendor as carrying costs for the Unit (which include, without limitation, real property taxes and insurance costs) and delays in construction scheduling and works. Therefore, in such event, the Purchaser agrees that the Vendor shall have the right, but not the obligation, to terminate this Agreement, subject to notice and opportunity to cure set forth in Clause 16.5 hereof and to retain the Deposit and all Stage Payments (if any) as liquidated damages in accordance with and subject to the limitations of Clause 16.6 hereof.*

(iii) Section 16.5 of the Sale Agreement provides the following:

- ***"Notice and Opportunity to Cure upon Purchaser's Default****. If the* ***Purchaser fails to perform any of the Purchaser's obligations hereunder as*** *and when due, the Vendor shall deliver to the Purchaser a written notice demanding that the Purchaser comply with the terms hereof within Fourteen (14) days following the* ***Purchaser's receipt of the notice. If the*** *Purchaser has not complied upon the expiration of the Fourteen (14) day period (time being of the essence), the Vendor may deliver to the Purchaser a written notice terminating this Agreement. On delivery of a wr****itten notice terminating this Agreement, the Vendor's obligations*** *hereunder shall terminate automatically and the Purchaser shall deliver to the Vendor any documents delivered to the Purchaser hereunder and the Vendor will be entitled to payment of liquidated damages in accordance*

with and subject to the limitations of Clause 16.6 hereof ***as the Vendor's*** *sole remedy. In such event, this Agreement shall thereon be terminated and cancelled and all rights and obligations of the parties under this Agreement that do not expressly survive the termination of this Agreement shall terminate and be null and void. Notwithstanding anything herein to the contrary, any action by the Purchaser which results in an encumbrance or claim against the title to the Unit shall be excluded from the aforementioned limitation of damages and the Vendor shall have the absolute right to bring any action at law or in equity if any lien, charge, or other encumbrance on the Unit results directly or indirectly from* ***Purchaser's actio****ns; the foregoing shall survive termination of this Agreement. Neither the Purchaser nor the Vendor shall have any right to* ***monetary damages except as specifically set forth in this Agreement."***

(iv) Pursuant to Clause 16 of the Agreement the Vendor requires the Purchasers each, within Ten (10) Business Days of the date hereof (time being of the essence), to pay the balances owing on the purchase price for each of the Units and FFE Packages as shown on the relevant enclosed Purchaser Completion Statement.

(v) If the Purchaser fails to comply with this Notice within the period stipulated above, the Vendor may terminate each of the Agreements and forfeit such portion of the Stage Payments made to date as to which the Vendor would be entitled to as liquidated damages under the Agreements as liquidated damages and the said Sale Agreements shall be cancelled forthwith.

Without prejudice to the rights and position of the Vendor as set forth above, and without waiver of the Purchaser's obligations, the Vendor acknowledges the particular complexity of this matter and that the expiration of the stipulated Ten (10) Business Day period for completion noted above (time being of the essence in respect of the same) would fall during the upcoming holidays when ordinary business may be interrupted. In the circumstances, if the Purchaser is desirous of extending the notice period for final completion, then we are instructed to advise that the Vendor would be willing to agree to an extension of the period to complete until on or before close of business on Wednesday 31st January, 2024 provided that (i) the Purchasers confirm the understanding previously discussed and their agreement to be responsible for payment of all condominium charges, property taxes, and other outgoings payable in respect of the Unit, to be pro-rated as of the date on which each closing originally ought to have occurred under the Closing Notices provided last year (i.e. as of Tuesday 29th November, 2022) and (ii) that such agreement be confirmed for or by the Purchasers on or before close of business on Wednesday 20th December, 2023.

You will recall that in our email of 3rd May last, it was mentioned that it was unclear which firm/attorney and party has authority and capacity to address matters relating to the sale of the captioned units to FTX Property Holdings Ltd. Given that we have not received a reply on that point, and in an abundance of caution, please note that this letter is copied to those other

firms that have previously contacted us in connection with this matter in the event that may need to be aware of its contents.

Given the circumstances, we urge you to give this matter your immediate attention.

Yours sincerely,
GRAHAM THOMPSON

Alistair W. Chisnall

cc. (via email only)

Jason T. Maynard
Peter D. Maynard
Bay & Deveaux Sts., 2nd Floor
Nassau, The Bahamas
Email: jason.maynard@maynardlaw.com

Mr. Brian Simms KC (Joint Provisional Liquidator of FTX Digital Markets
Lennox Paton
3 Bayside Executive Park
West Bay Street & Blake Road
Nassau, The Bahamas
Email: bsimms@lennoxpaton.com

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 113,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		$1,222,615.00
Less:		
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$1,100,353.00	
Vendor's pro-rated share of 2023 Real Property Tax ($6,253.60) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,065.14	
	$1,106,418.14	$1,106,418.14
Sub-total of balance payable to complete:		$116,196.86
Plus:		
Additional FF&E Package:	$120,000.00	
BTIAL Title Insurance Premium and VAT (10%):	$6,602.20	
Initial Condominium Association Deposit:	$5,000.00	
Title Search Fee ($450) and VAT (10%):	$495.00	
	$132,097.20	$132,097.20
Total payable by Purchaser to complete:		$248,294.06

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$1,100,353.00

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 114,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		$1,404,430.00
Less:		
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$1,263,987.00	
Vendor's pro-rated share of 2023 Real Property Tax ($6,212.00) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,024.79	
	$1,270,011.79	$1,270,011.79
Sub-total of balance payable to complete:		$134,418.21
Plus:		
Additional FF&E Package:	$120,000.00	
BTIAL Title Insurance Premium and VAT (10%):	$7,502.00	
Initial Condominium Association Deposit:	$5,000.00	
Title Search Fee ($450) and VAT (10%):	$495.00	
	$132,997.00	$132,997.00
Total payable by Purchaser to complete:		$267,415.21

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$1,263,987.00

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 228,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		US	$1,449,885.00
Less:			
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$1,304,896.50		
Vendor's pro-rated share of 2023 Real Property Tax ($6,258.80) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,070.18		
	$1,310,966.68		$1,310,966.68
Sub-total of balance payable to complete:			$138,918.32
Plus:			
Additional FF&E Package:	$120,000.00		
BTIAL Title Insurance Premium and VAT (10%):	$7,727.50		
Initial Condominium Association Deposit:	$5,000.00		
Title Search Fee ($450) and VAT (10%):	$495.00		
	$133,222.50		$133,222.50
Total payable by Purchaser to complete:		US	$272,140.82

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$1,304,896.50

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 232,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		US	$563,520.00
Less:			
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$507,168.00		
Vendor's pro-rated share of 2023 Real Property Tax ($3,750) for period from 01.01.2023 to 12.20.2023 (354 days):	$3,636.99		
	$510,804.99		$510,804.99
Sub-total of balance payable to complete:			$52,715.01
Plus:			
Additional FF&E Package:	$70,000.00		
BTIAL Title Insurance Premium and VAT (10%):	$3,099.30		
Initial Condominium Association Deposit:	$5,000.00		
Title Search Fee ($450) and VAT (10%):	$495.00		
	$8,594.30		$8,594.30
Total payable by Purchaser to complete:		US	$61,309.31

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$507,168.00

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 235,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		US	$1,017,575.00
Less:			
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$915,817.00		
Vendor's pro-rated share of 2023 Real Property Tax ($6,218.60) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,031.19		
	$921,848.19		$921,848.19
Sub-total of balance payable to complete:			$95,726.81
Plus:			
Additional FF&E Package:	$120,000.00		
BTIAL Title Insurance Premium and VAT (10%):	$5,586.90		
Initial Condominium Association Deposit:	$5,000.00		
Title Search Fee ($450) and VAT (10%):	$495.00		
	$131,081.90		$131,081.90
Total payable by Purchaser to complete:		US	$226,808.71

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$915,817.00

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 337,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		US	$881,705.00
Less:			
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$793,534.50		
Vendor's pro-rated share of 2023 Real Property Tax ($6,231.30) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,043.51		
	$799,578.01		$799,578.01
Sub-total of balance payable to complete:			$82,126.99
Plus:			
Additional FF&E Package:	$120,000.00		
BTIAL Title Insurance Premium and VAT (10%):	$4,849.90		
Initial Condominium Association Deposit:	$5,000.00		
Title Search Fee ($450) and VAT (10%):	$495.00		
	$130,344.90		$130,344.90
Total payable by Purchaser to complete:		US	$212,471.89

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$793,534.50

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 434,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		US	$1,154,430.00
Less:			
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$1,038,987.00		
Vendor's pro-rated share of 2023 Real Property Tax ($6,239.10) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,051.07		
	$1,045,038.07		$1,045,038.07
Sub-total of balance payable to complete:			$109,391.93
Plus:			
Additional FF&E Package:	$120,000.00		
BTIAL Title Insurance Premium and VAT (10%):	$6,264.50		
Initial Condominium Association Deposit:	$5,000.00		
Title Search Fee ($450) and VAT (10%):	$495.00		
	$131,759.50		$131,759.50
Total payable by Purchaser to complete:		US	$241,151.43

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$1,038,987.00

GrahamThompson

PURCHASER COMPLETION STATEMENT

Purchase of Unit 436,
Residences At GoldWynn Condominium, NP, Bahamas

Purchase Price:		US	$881,705.00
Less:			
Deposit Payment, Stage Payments and any other pre-payments paid prior to Closing:	$793,534.00		
Vendor's pro-rated share of 2023 Real Property Tax ($6,239.60) for period from 01.01.2023 to 12.20.2023 (354 days):	$6,051.56		
	$799,585.56		$799,585.56
Sub-total of balance payable to complete:			$82,119.44
Plus:			
Additional FF&E Package:	$120,000.00		
BTIAL Title Insurance Premium and VAT (10%):	$4,849.38		
Initial Condominium Association Deposit:	$5,000.00		
Title Search Fee ($450) and VAT (10%):	$495.00		
	$130,344.38		$130,344.38
Total payable by Purchaser to complete:		US	$212,463.82

TOTAL DEPOSIT & STAGE PAYMENTS TO DATE:	$793,534.00

Indemnity Agreement

This Indemnity Agreement ("this Agreement") is entered into on 18th **December 2023** by and between and **FTX Digital Markets Ltd (in "Official Liquidation")** acting by its Joint Official Liquidators (as defined below) as agents and without personal liability **("the Indemnitor")** and **Wynn Development Limited** (**"the Indemnitee"**) (together **"the Parties")**.

WHEREAS

A. The Indemnitor is a Company in Official Liquidation.

B. The Indemnitee is the Developer of the Residences at Goldwynn a 154-unit luxury condominium development constructed on a 4.67 acre parcel of land situate in Cable Beach, West Bay Street, New Providence, The Bahamas.

C. The Indemnitee entered into an Agreement for Sale dated 4 March 2022 for the sale and purchase of Unit Number 113 of The Residences at Goldwynn with Weiyi Xia for a purchase price of $1,222,615 ("**the Sale and Purchase Agreement**").

D. Indemnitor paid a number of instalment stage payments in the cumulative sum of $1,100,353.00 on behalf of Weiyi Xia in performance of her obligation as purchaser and or furtherance of the Sale and Purchase Agreement ("**the Instalment Payments**").

E. The Indemnitor has a proprietary tracing claim to the Instalment Payments.

F. The Indemnitor and the Indemnitee intend to enter into an agreement to complete the Sale and Purchase Agreement on the 19th December 2023.

G. The Indemnitor has agreed to indemnify the Indemnitee against any adverse costs, damages, or expenses that may be incurred by the Indemnitee in the event any proceedings are commenced by Weiyi Xia as a result of the sale and purchase and completion of Unit Number 113 to the Indemnitor.

The Parties hereby agree as follows:

1. **Indemnification**. The Indemnitor covenants to indemnify and shall fully indemnify, and hold the Indemnitee, its successors, directors, officers employees and assigns, harmless with respect to all losses, costs, liens, liabilities, demands, causes of actions, actions, causes, claims, damages, penalties, fines, charges and expenses, including without limitation, attorneys fees and costs, sustained by the Indemnitee with respect to, arising out

of, due to, in connection with, or as a consequence of, any legal proceedings commenced or applications brought against the Indemnitee arising from the Sale and Purchase Agreement, the completion of the sale and purchase thereunder, and/or the conveyance of Unit 113 to the Indemnitor.

2. The Indemnitor covenants and shall undertake to take over or defend any claim and/or otherwise control, direct and/or instruct counsel in any proceedings which may be brought by Weiyi Xia against the Indemnitee arising from the Sale and Purchase Agreement, the completion of the sale and purchase thereunder, and/or the conveyance of the Unit 113 to the Indemnitor. The Indemnitee shall permit the Indemnitor to take all actions necessary for the purposes of defending any such claim or proceeding as referred to above including defending such claim or proceeding in the name of and on behalf of the Indemnitee.

3. **Amendments**. Except as otherwise provided herein, any provision of this Agreement may be amended or waived only with prior written consent of each of the Parties hereto.

4. **Successors and Assigns**. Except as otherwise provided herein, any provision of this Agreement may by amended or waived only with the prior written consent of each of the Parties hereto.

5. **Severability**. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

6. **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts (including by means emailed signature pages), each of which shall constitute an original, but all of which taken together shall constitute one and the same Agreement.

7. **Entire Agreement**. This Agreement constitutes the entire understanding between the Parties, and supersedes all other agreements, whether written or oral, with respect to the subject matter hereof.

8. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of The Bahamas and the Parties hereto hereby agree to submit to the exclusive jurisdiction of the Court of The Bahamas.

[Signatures appear on the following pages]

In witness whereof the Parties have executed this Agreement as of the date first above written.

In Witness Whereof the Indemnitors have caused this Agreement to be duly executed.

FTX Digital Markets Ltd (in Official Liquidation)

Brian Cecil Simms KC (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

Date

Kevin G Cambridge (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

Date

Peter Greaves (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
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Date

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FTX Digital Markets Ltd (in Official Liquidation)

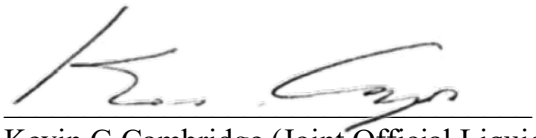
_____ _____

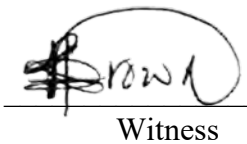
Brian Cecil Simms KC (Joint Official Liquidator) Witness

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

_____

Date





Kevin G Cambridge (Joint Official Liquidator) Witness

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

_____

Date

_____ _____

Peter Greaves (Joint Official Liquidator) Witness

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

_____

Date

Date

Peter Greaves (Joint Official Liquidator)

Witness

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

Date

Wynn Development Limited

Witness

Date

1

Date

Witness

Peter Greaves (Joint Official Liquidator)

Acting in his capacity as a Joint Official Liquidator
Of FTX Digital Markets Ltd as an agent without
Personal liability

Date

Wynn Development Limited

Witness

Dec 21/23

Date

1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 15
FTX DIGITAL MARKETS LTD.,[1]	)	Case No. 22-11217 (JTD)
Debtor in a Foreign Proceeding.	)	**Hearing Date: Jan. 25, 2024 at 3:30p.m. (ET)** **Objection Deadline: Jan. 18, 2024 at 4:00p.m. (ET)**

MOTION OF THE FOREIGN REPRESENTATIVES PURSUANT TO BANKRUPTCY RULE 9019 FOR ENTRY OF AN ORDER (I) APPROVING THE SETTLEMENT AND (II) GRANTING RELATED RELIEF

Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves (the "**Foreign Representatives**"), in their capacity as joint official liquidators and foreign representatives of FTX Digital Markets Ltd., in official liquidation in the Supreme Court of the Commonwealth of The Bahamas (the "**Bahamian Official Liquidation**") pursuant to the Companies (Winding Up Amendment) Act, 2011 (the "**CWUA Act**") in the Supreme Court of The Bahamas (the "**Bahamas Court**"), by and through their undersigned counsel, hereby move (the "**Motion**"), pursuant to sections 105, 363, and 1520 of title 11 of the United States Code (the "**Bankruptcy Code**"), and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**"), approving the *Global Settlement Agreement* (the "**GSA**" a copy of which is attached hereto as **Exhibit B**) between FTX Digital Markets, Ltd. ("**FTX DM**") and FTX Trading Ltd. ("**FTX Trading**") and its affiliated debtors and debtors-in-possession (collectively, the "**Debtors**" and together with FTX DM, the "**Parties**") under the chapter 11 cases captioned *In re FTX Trading Ltd.*, et al., Case No. 22-11068 (JTD) (Bankr. D. Del. 2022) (the "**Chapter 11 Cases**") and granting

[1] FTX Digital Markets Ltd. (in Official Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

related relief.[2] In support of the Motion, the Foreign Representatives submit the declaration of Peter Greaves (the "**Greaves Declaration**"), attached hereto as **Exhibit C**, and respectfully state as follows:

PRELIMINARY STATEMENT

1. For well over a year, FTX DM and the Debtors have been sparring over complex cross-border legal issues, including the Parties' respective legal rights regarding more than $9 billion of claims and cross claims for international and domestic assets, including ownership rights over assets located in the United States. Greaves Decl. ¶ 6. After many months of difficult and complicated negotiations, however, FTX DM and the Debtors have agreed to a global and mutually beneficial settlement of all of their material disputes through the GSA (the "**Settlement**"). Greaves Decl. ¶ 7. The Settlement encompasses the GSA, as well as the ancillary Loan Agreement and Exclusive Sales Agency Agreement between the Parties, each of which are all subject to court approval or sanction by this Court or the Bahamas Court in various respects. *Id.* The Foreign Representatives refer to and incorporate by reference the Loan Agreement and Exclusive Sales Agency Agreement, which the Debtors' are requesting this Court's approval of in their own motions filed contemporaneously herewith. Additionally, the GSA, the Loan Agreement and Exclusive Sales Agency Agreement are also subject to the approval of the Bahamas Court.

2. Bankruptcy courts within this district have made clear that section 363 of the Bankruptcy Code governs a chapter 15 debtor's use of property located in the United States. *See In re Elpida Memory*, Case No. 12-10947 (CSS), 2012 WL 6090194, at *3 (Bankr. D. Del. Nov. 20, 2012) (finding that section 363 "appl[ies] to a transfer of an interest of the debtor in property

[2] The Debtors previously filed a copy of the GSA with the United States Bankruptcy Court for the District of Delaware (this "**Court**") on December 19, 2023. *See* Case No. 22-11068 (JTD) at Docket No. 4904.

that is within the territorial jurisdiction of the United States *to the same extent that the section[] would apply to property of an estate*.") (emphasis in original). Therefore, out of an abundance of caution, the Foreign Representatives seek approval of the Settlement from this Court because it settles claims regarding and transfers property of FTX DM that is located in the United States – namely: proceeds of certain accounts in FTX DM's name that are located in the United States; and property located in the United States that FTX DM and the Debtors dispute title to and no legal determination has been made.

3. The Settlement, subject to approval of both the Bahamas Court and this Court, contains two substantive key components. Greaves Decl. ¶ 8. *First*, it contemplates a procedure under which customers of the FTX.com exchange may elect to have their claims adjudicated and paid in either the Bahamian Official Liquidation or the Chapter 11 Cases. *Id.* This election will allow the customers of the FTX.com exchange to choose their preferred forum. *Id.* Regardless of their election, all FTX.com customers with valid claims will receive, at similar times, substantially similar distributions. *Id.*

4. *Second*, the Settlement contemplates procedures with respect to the monetization and distribution of the assets of the FTX Group. Greaves Decl. ¶ 9. FTX DM, acting by the Foreign Representatives, will take the operational lead in the realization of real estate and other assets in The Bahamas to maximize recoveries for customers and creditors, together with the pursuit of specific litigation claims and avoidance actions identified in the GSA. *Id*. The Debtors will take the operational lead with respect to all other recovery activities available to both estates. In each case, the Parties will cooperate, share information, and effectively utilize the assistance of their respective courts. *Id.*

5. This Court is not being asked to approve at this time any matter that will be addressed in the Debtors' plan of reorganization, including the treatment of customer claims, because the Settlement contemplates a staggered effectiveness structure with an initial effective date and a final effective date. The approval by this Court and sanction by the Bahamas Court of the Settlement and ancillary documents are conditions precedent to *initial effectiveness*. The Settlement will not reach *final effectiveness* unless and until a plan of reorganization (that is consistent with the Settlement) is confirmed by this Court and becomes effective.

6. Without the Settlement, both estates face an almost insurmountable hurdle which will waste valuable time and resources and prevent both estates from adjudicating and making distributions to the customers of the FTX.com exchange. The Settlement will avoid years of protracted litigation between FTX DM and the Debtors and will allow the Bahamian Official Liquidation to proceed without litigation costs continuing to drain limited resources. It signifies a vital step towards the now hopeful resolution of the collapse of the FTX Group. Accordingly, the Foreign Representatives submit that the Settlement is in the best interests of FTX DM's estate, creditors, and stakeholders.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

8. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Foreign Representatives consent to entry of a final judgment or order with respect to this Motion if it is

determined that this Court, absent consent of the Parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

9. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The basis for the relief requested herein are sections 105, 363, and 1520 of the Bankruptcy Code, as well as Bankruptcy Rule 9019.

BACKGROUND

I. General Background

11. On November 10, 2022, the Securities Commission of The Bahamas filed a petition for the winding up of FTX DM with the Bahamas Court. That same day, the Bahamas Court ordered a provisional liquidation proceeding for FTX DM (the "**Provisional Liquidation**") and appointed Brian C. Simms, KC as provisional liquidator. On November 14, 2022, the Bahamas Court also appointed Kevin G. Cambridge and Peter Greaves as joint provisional liquidators of FTX DM.

12. On November 11 and November 14, 2022 (as applicable, the "**Petition Date**"), the Debtors commenced the Chapter 11 Cases.

13. On November 15, 2022, the Foreign Representatives filed a chapter 15 petition on behalf of FTX DM for recognition of its Provisional Liquidation as a foreign main proceeding in the United States Bankruptcy Court for the Southern District of New York, which case was thereafter transferred to this Court. This Court entered an order recognizing the Provisional Liquidation as a foreign main proceeding and the Foreign Representatives as foreign representatives of the FTX DM estate in the United States on February 15, 2023. *See* Case No. 22-10217 (JTD) at Docket No. 129.

14. On June 29, 2023, FTX DM timely filed a proof of claim against the Debtors in an amount of $9,150,790,714.84 plus contingent and unliquidated amounts (the "**Proof of Claim**").

15. On November 10, 2023, the Bahamas Court granted an order that, among other things, (a) appointed the Foreign Representatives as joint official liquidators of FTX DM and (b) determined that FTX DM be wound up in accordance with the CWUA Act.

II. The Disputes

16. Prior to and upon the commencement of the Chapter 11 Cases and the appointment of the Foreign Representatives, a myriad of disputed issues arose between the estates. The disputes intensified for a number of months, and the Parties soon realized that these issues could not be easily resolved due to the massively complex nature of the FTX enterprise collapse and the unique cross-border questions that were implicated. Therefore, on January 6, 2023, FTX DM and the Debtors executed a cooperation agreement (the "**Cooperation Agreement**") intending to resolve a number of these disputes. The Cooperation Agreement was approved by this Court in the Chapter 11 Cases on February 9, 2023, Case No. 22-11068 (JTD) at Docket No. 683, and by the Bahamas Court on February 10, 2023.

17. The disputes between the Debtors and FTX DM continued notwithstanding the Cooperation Agreement. Indeed, on March 19, 2023, the Debtors filed a complaint against FTX DM and the Foreign Representatives, initiating the adversary proceeding captioned *Alameda Research LLC, Alameda Research Ltd., FTX Trading Ltd., West Realm Shires, Inc., and West Realm Shires Services, Inc., vs. FTX Digital Markets Ltd., Brian C. Simms, Kevin G. Cambridge, Peter Greaves, and J. Does 1-20*, Adv. Pro. No. 23-50145 (JTD) (Bankr. D. Del. Mar. 19, 2023) [Docket No. 1] (the "**Adversary Proceeding**"). The Foreign Representatives and FTX DM

thereafter contested the Debtors' allegations and asserted their own counterclaims against the Debtors on July 12, 2023, in the Adversary Proceeding.

18. On March 29, 2023, FTX DM filed a motion in the Chapter 11 Cases, Case No. 22-11068 (JTD) at Docket No. 1192 (the "**Lift Stay Motion**") seeking an order from the Bankruptcy Court clarifying that the automatic stay did not apply or, in the alternative, for relief from the automatic stay to file an application in the Provisional Liquidation in The Bahamas to resolve certain novel and complex legal issues regarding FTX DM's relationship to the FTX.com platform and its customers.

19. On June 20, 2023, the Court entered an order denying the Lift Stay Motion and ordered the Parties to mediate. *See* Case No. 22-11068 (JTD) at Docket No. 1883.

20. As directed by the Court, the Parties engaged in good faith, arm's-length negotiations over a period of many months regarding the terms of a global settlement that would resolve all of their disputes and ensure mutual support for their respective insolvency proceedings. Greaves Decl. ¶ 6. The Settlement followed from these negotiations and reflects each Party's desire to settle all disputes between them and a commitment to support the other Party's insolvency cases and any other related and/or ancillary proceedings.

III. The Settlement

21. The Settlement is a landmark breakthrough in both the Chapter 11 Cases and Bahamian Official Liquidation. Through the Settlement, all disputes between the Debtors and FTX DM (and its Foreign Representatives), many of which raised many novel and complex legal issues in the largest digital asset cross-border insolvency to date, will be resolved and a framework for cooperation among the Parties will be established. *See* Greaves Decl. ¶ 11. As a result, the Parties will be able to work collaboratively to efficiently maximize the value of the FTX Group's assets

and accelerate distributions to creditors. *Id.* Thus, the Settlement confers substantial benefits upon FTX DM and its estate while avoiding the risks and uncertainties of adjudicating the merits of FTX DM's claims against the Debtors, in both this Court and the Bahamas Court. *Id.* Importantly, the Settlement avoids the costs of potentially litigating the claims twice (and potentially in two different fora). *Id.*

22. The following is a summary of certain pertinent terms of the Settlement. Greaves Decl. ¶ 10. The descriptions contained in this summary are for referential purposes to assist the Court and the terms of the Settlement control.[3]

Staggered Effectiveness **Sections 1.01 and 10.19**	The approval by this Court and sanction by the Bahamas Court of the GSA and ancillary documents are conditions precedent to *initial effectiveness* of the Settlement. The GSA will not reach *final effectiveness* unless and until a plan of reorganization (that is consistent with the GSA) is confirmed by this Court and becomes effective.
Terms Effective Upon *Initial* Settlement Effective Date	
Support **Sections 3.02, 4.02**	In the Bahamian Official Liquidation, the Debtors will not object to, or take any action contrary to any liquidation of FTX DM proposed by the Foreign Representatives that is consistent with the terms of the GSA. In the Chapter 11 Cases, FTX DM and the Foreign Representatives will support any plan of reorganization proposed by the Debtors that is consistent with the terms of the GSA.
Opt-In **Sections 5.02(a) and5.07**	All customers of FTX.com (other than insiders and certain excluded customers against whom the Debtors have pending or potential claims) will have the opportunity to elect whether to have their claims reconciled and paid in the Bahamian Official Liquidation or in the Chapter 11 Cases, under the elective procedures, which the Parties will finalize and propose to the Courts for prior approval. FTX DM and the Debtors currently anticipate that eligible FTX.com customers will be able to make this election either in a claim form filed in the Bahamian Official Liquidation or in response to Chapter 11 plan ballots distributed by the Debtors.

[3] Capitalized terms used in this section, to the extent not defined herein, shall have the meanings given to them in the Settlement.

KYC Procedures **Section 5.08**	Know-Your-Customer Procedures will be implemented in a coordinated manner designed to ensure compliance with applicable law in the United States, The Bahamas, and all other applicable jurisdictions. FTX DM will adopt the same Know-Your-Customer Procedures implemented by the Debtors in the Chapter 11 cases.
Settlement of Preference Actions **Section 5.05**	The Debtors and FTX DM will use commercially reasonable efforts to (i) make the same settlement offer to Dotcom Customers available in the Chapter 11 Cases and, the DM Liquidation and (ii) release the settled Recovery Actions belonging to the estates of the Debtors and FTX DM upon acceptance of the offer.
Loan Agreement **Section 5.06(a)**	Subject to the approval of this Court and the Bahamas Court, pursuant to the terms of the Loan Agreement, the Debtors will provide FTX DM an interest-bearing loan of $45 million exclusively to pay Administrative Expenses. Certain extraordinary events trigger a mandatory prepayment of the loan. The principal on the loan matures on the earlier of: 18 months; the chapter 11 Plan Effective Date; termination of the GSA; or when the principal automatically becomes due pursuant to the terms of the Loan Agreement.
Third-Party Litigation **Section 2.02**	The Parties have agreed to a consensual approach with respect to litigation against unaffiliated third parties through Recovery Actions. The right to manage and control the prosecution of Recovery Actions has been amicably divided between the Parties. The Parties will cooperate and use commercially reasonable efforts to maximize recoveries from all Recovery Actions.
Bahamas Real Property **Section 2.04**	Each Party agrees to joint processes set forth in the Exclusive Sales Agency Agreement for the prompt cash sale of real estate owned by FTX Property Holdings Ltd. ("**PropCo**") in The Bahamas. FTX DM, acting by its Foreign Representatives will take the operational lead in marketing and selling the real estate owned by PropCo.
Valuation **Section 5.03**	FTX DM will use commercially reasonable efforts to determine the fair market value of digital assets in a manner that is consistent with the valuation methodologies and processes adopted by the Debtors in consultation with FTX DM in the Chapter 11 Cases in order to minimize potential discrepancies in the administration of their respective proceedings. The valuation of digital assets as of the Petition Date will reflect a consensual approach between the Debtors and FTX DM, approved by both Courts.

Terms Effective Upon *Final* Settlement Effective Date (Chapter 11 Plan Effectiveness)	
Distributions **Section 5.07(b)**	Upon effectiveness of the Debtors' plan of reorganization, for the purposes of making distributions to FTX.com customers, the Debtors and FTX DM will pool assets, and coordinate the establishment of reserves and the timing and amount of distributions, to ensure that FTX.com customers in both proceedings receive substantially identical relative distributions at substantially identical times.
Disputed Property **Section 2.01,** **Exhibit C**	The Parties will consensually allocate disputed property between the Debtors and FTX DM, to be vested free and clear of all claims and interests of the other on the Final Settlement Effective Date.
Inter-Estate Funding **Section 5.06**	On any distribution date, the Debtors will determine the distributable amount (reserving for appropriate holdback amounts) for customers of the FTX.com exchange as a cumulative percentage. To the extent that one estate does not have sufficient assets to fulfil the distributable amount, the other estate will pay cash sufficient to pay the full distributable amount owed to customers.
PropCo Chapter 11 Plan **Section 2.04**	PropCo will be treated separately under the Chapter 11 Plan and not be substantively consolidated with any other Debtor. FTX DM will have a claim against PropCo, stipulated and Allowed as an unsecured, unsubordinated, prepetition Claim in the amount of $256,291,221.47; provided that the Stipulated PropCo Claim will be subordinated to the PropCo Ordinary Course Claims.
Releases **Section 9**	The Parties will fully release each other from, against, and in respect of any and all present and future Claims connected to the Settlement (other than the Stipulated PropCo Claim).
Stay of Adversary Proceeding **Sections 7.01, 7.02**	In full and final settlement and satisfaction of the Adversary Proceeding, the Adversary Proceeding Parties (as defined by the GSA) agree to settle upon effectiveness of the Debtors' plan of reorganization (a) all Claims and Causes of Action between the Parties that are asserted or could have been asserted in the Adversary Proceeding and all pending litigation between the Parties on the terms set forth in the GSA, (b) all intercompany Claims between the Parties, except as provided otherwise in the GSA, and (c) any potential objection either Party may have to such settlement on such terms.

RELIEF REQUESTED

23. By this Motion, the Debtors respectfully request that this Court enter an Order substantially in the form of the Proposed Order attached hereto as **Exhibit A** (i) approving the Settlement pursuant to Bankruptcy Rule 9019 and section 105 of the Bankruptcy Code; and (ii) granting related relief.

BASIS FOR RELIEF

I. The Motion Satisfies the Standards of Bankruptcy Rule 9019 and the Settlement Should be Approved.

24. Section 105(a) of the Bankruptcy Code provides, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 103 of the Bankruptcy Code provides that chapter 1 of the Bankruptcy Code applies in chapter 15 cases. 11 U.S.C. § 103(a).

25. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Bankruptcy Rule 9019(a) has been applied in the context of chapter 15 cases. *See, e.g., In re Grant Forest Prod. Inc.*, No. 10-11132 (PJW), 2012 WL 3017090, at *1 (Bankr. D. Del. Apr. 11, 2012); *In re Cinque Terre Fin. Grp. Ltd.*, No. 16-11086 (JLG), 2017 WL 4843738, at *10 (Bankr. S.D.N.Y. Oct. 24, 2017); *In re Unique Broadband Sys. Ltd.*, No. 19-11321 (BLS) [D.I. 27] (Bankr. D. Del. Apr. 15, 2020); *In re Grand Prix Assocs. Inc.*, No. 09-16545 (DHS), 2009 WL 1850966, at *5 (Bankr. D.N.J. June 26, 2009); *In re CX Reinsurance Co. Ltd.*, No. 20-12156 (MG) [D.I. 25] (Bankr. S.D.N.Y. Mar. 11, 2022)*; In re Ace Track Co., Ltd.*, 556 B.R. 887, 909 (Bankr. N.D. Ill. 2016) ("[T]he court can find no good reason to conclude that Rule 9019 does not apply [in the Chapter 15 context], and no case that fails to apply it under similar circumstances.").

26. Settlements and compromises are "a normal part of the process of reorganization." *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). It is well settled that in order to "minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. 1993)); *see also Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that "[s]ettlements are favored [in bankruptcy]"); *In re Adelphia Commc'n Corp.*, 361 B.R. 337, 349 (Bankr. D. Del. 2007) (same). Accordingly, when required, "courts are able to craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, effect the result the [Bankruptcy] Code was designed to obtain." *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003).

27. Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Louise's Inc.*, 211 B.R. 798, 801 (D. Del. 1997) ("The decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate."); *In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del 1998) ("[T]he ultimate inquiry [is] whether 'the compromise is fair, reasonable, and in the interest of the estate.'" (citation omitted)); *In re Nw. Corp.*, No. 03-12872 (KJC), 2008 WL 2704341, at *6 (Bankr. D. Del. July 10, 2008) ("[T]he bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate.") (citation omitted); *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr D. Del. 2005) ("[T]he bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable."). "Ultimately, the

decision whether or not to approve a settlement agreement lies within the sound discretion of the Court." *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014).

28. In *Martin*, the United States Court of Appeals for the Third Circuit set forth a four-factor balancing test that should be considered in determining whether a settlement should be approved. The factors the Court must consider are: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Martin*, 91 F.3d at 393. *See also In re Nutraquest*, 434 F.3d at 644–45 (applying *Martin's* four-factor test to affirm district court's order approving settlement); *Nebo Ventures, LLC v. Stanziale (In re Novapro Holdings, LLC*), No. 18-766-RGA, 2019 U.S. Dist. LEXIS 49047 (D. Del., Mar. 5, 2019) (applying *Martin's* four-factor test to affirm bankruptcy court's order approving settlement); *Key3Media*, 336 B.R. at 93 (holding that, when determining whether a compromise is in the best interests of the estate, courts must "assess and balance the value of the claim that is being compromised against the value of the estate of the acceptance of the compromise proposal"). No one factor is determinative, and a court should "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *Martin*, 91 F.3d at 393.

29. Importantly, it is well-established that a settlement proponent need not convince the Court that a settlement is the best possible compromise, but only that the settlement falls "within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness." *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008); *see also In re W.R. Grace & Co.*, 475 B.R. 34, 77–78 (Bankr. D. Del. 2012) ("In analyzing the compromise or settlement agreement under the *Martin* factors, courts should not have a

'mini-trial' on the merits, but rather should canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness."); *In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 475-76 (Bankr. D. Del. 2010) ("To determine whether a settlement is fair and equitable, the Court need only canvas the issues to determine whether the settlement falls above the lowest point in the range of reasonableness. Whether settlement is above the lowest point in the range of reasonableness, in turn, is determined by considering the *Martin* factors").

30. The Foreign Representatives respectfully submit that the Settlement is fair and reasonable, is in the best interests of FTX DM's estate and creditors and should be approved pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code. Indeed, the Settlement is the product of extensive, good-faith discussions and arm's length bargaining among the Parties. The Foreign Representatives believe that the Settlement represents a favorable result for FTX DM's estate and falls well within the range of reasonableness under the *Martin* factors.

31. With respect to the first and third *Martin* factors—the probability of success in litigation and complexity of the issues arising in: the Adversary Proceeding; the prosecution of FTX DM's proof of claim filed against the Debtors; and the complexity of the cross-border dual insolvency proceedings—in the absence of the Settlement, any potential resolution of the Parties' dispute would require FTX DM to engage in lengthy and costly litigation. In particular, the Adversary Proceeding would require this Court to resolve certain novel and complex legal issues regarding FTX DM's relationship to the FTX.com platform and its customers. Additionally, prosecution and litigation of FTX DM's proof of claim would involve reconciling inaccurate books and records and complex legal determinations that overlap with the issues in the Adversary Proceeding. As this Court has previously observed, "nothing's going to happen" in the Chapter 11 Cases until the disputes between the Debtors and FTX DM are resolved. *See* June 9, 2023, Hr'g

Tr. at 172:13-17. Indeed, without the Settlement, neither FTX DM nor the Debtors would be able to gainfully proceed in their respective insolvency proceedings.

32. Although FTX DM and its Foreign Representatives are confident in their legal and factual positions, the outcome of this litigation is inherently uncertain. In spite of FTX DM and the Foreign Representatives' strong legal and factual arguments in support of their positions, the Debtors have made it clear that they do not agree, and there is inherent risk that this Court or another court ultimately will not agree with all of the litigation positions of FTX DM and its Foreign Representatives. Furthermore, significant time, money, and other resources would be necessary to litigate FTX DM's claims against the Debtors, particularly with respect to the Adversary Proceeding. Greaves Decl. ¶ 12. This, coupled with the risks and uncertainties related to prosecuting all of FTX DM's claims, makes entry into the Settlement in FTX DM's estate and creditors' best interests. *Id.*

33. The inherent uncertainty with respect to litigation of the Parties' claims weighs in favor of compromise under these circumstances. *See Capmark*, 438 B.R. at 518 (finding uncertainty weighs in favor of settlement). Furthermore, any judgment obtained may be subject to appeal and needs enforcement in each of the Debtors' and FTX DM's respective jurisdictions, which could entail further substantial costs and a significant and additional delay which would inhibit FTX DM and the Debtors from gainfully proceeding in their respective insolvency proceedings to the detriment of the FTX.com customer body and creditors as a whole. In contrast, the Settlement allows the Parties to reach a just, reasonable, and consensual outcome, and avoids the uncertainty and delays of protracted and expensive litigation.

34. In addition, while the Foreign Representatives do not believe that difficulty in collection is necessarily relevant to the *Martin* factors, they are cognizant that there may be

impediments to collecting on any judgment, particularly with respect to enforcing judgments in international jurisdictions including The Bahamas and obtaining the transfer of assets to which FTX DM claims ownership over. By contrast, the Settlement provides for an agreed-upon framework with respect to the monetization of assets of the FTX Group and inter-estate funding mechanisms and approval by the Bahamas Court.

35. Finally, with respect to the interests of creditors, the Foreign Representatives believe that the Settlement inures to the benefit of, and is in the paramount interests of, FTX DM's creditors. Indeed, the Settlement contemplates that, subject to effectiveness of the Debtors' plan of reorganization, the customers of the FTX.com exchange will receive substantially the same recoveries regardless of whether they elect to have their claim treated in the Bahamian Liquidation Proceeding or the Chapter 11 Cases. Additionally, the Settlement allows for collaboration between FTX DM and the Debtors in the monetization of assets and adjudication of customer claims, with an approach that provides a roadmap to accelerate distributions to creditors of both estates. The Settlement will also help avoid litigation that could prove lengthy and costly.

36. The Foreign Representatives respectfully submit that the Settlement is fair, reasonable, and is in the best interests of FTX DM's estate. Greaves Decl. ¶ 12, 13. Accordingly, the Foreign Representatives submit that the Settlement should be authorized pursuant to Bankruptcy Rule 9019.

II. The Settlement is an Appropriate Use of Property of the Estate Under Section 363 and 1520 of the Bankruptcy Code.

37. Section 1520(a)(2) of the Bankruptcy Code makes section 363 applicable to property of FTX DM "that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(2). Section 1520(a)(3) of the Bankruptcy Code provides that the Foreign Representatives may "exercise the rights and powers of a trustee under and to the extent provided

by [section] 363." 11 U.S.C. § 1520(a)(3). The Settlement contemplates property of FTX DM that is located within the territorial jurisdiction of the United States. More specifically, the Settlement settles claims regarding the proceeds of certain bank accounts located in the United States in the name of FTX DM and other assets located in the United States in which no legal determination has been made on the proper ownership thereof. Therefore, relief from this Court is necessary pursuant to sections 1520(a)(3) and 363.

38. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). If a settlement is outside of the ordinary course of business of the debtor, then such requires approval of the bankruptcy court pursuant to section 363(b) of the Bankruptcy Code. *See Northview Motors, Inc. v. Chrysler Motors Corp.*, 186 F.3d 346, 350-51 (3d Cir. 1999); *see also Martin*, 91 F.3d at 395 n.2 ("Section 363 of the Code is the substantive provisions requiring a hearing and court approval; Bankruptcy Rule 9019 sets forth the procedure for approving an agreement to settle or compromise a controversy.").

39. It is well established in this district that a debtor may use property of the estate outside of the ordinary course of business under section 363(b) if sound business reasons exist for doing so. *See*, *e.g. Martin*, 91 F.3d at 395 (stating that courts generally defer to the trustee's judgment so long as there is a legitimate business justification); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-176 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001). "If a valid business justification exists, then a strong presumption follows that the underlying agreement was negotiated in good faith and is in the best interests of

the estate." *In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014).

40. The Settlement represents a fair and reasonable compromise. Greaves Decl. ¶ 13. The Settlement provides for a mutually beneficial solution to the complex cross-border legal issues raised by the circumstances of the collapse of the FTX Group, in a way that ensures customers in both proceedings receive, at similar times, substantially similar distributions on their claims. *Id.*

41. The Settlement also provides for a comprehensive and consensual resolution of the Adversary Proceeding and all outstanding disputes and claims between the Parties. *Id.* The resolution of all existing issues will enable the Parties to proceed with their respective insolvency proceedings and focus on prompt distributions to creditors. *Id.* Without the Settlement, liquidation of FTX DM's estate would be halted, and creditors could wait for years in order to even submit their proofs of debt, much less receive distributions, in the Bahamian Official Liquidation. *Id.*

42. The Foreign Representatives respectfully submit that entry into the Settlement is a reasonable exercise of their business judgment. Greaves Decl. ¶ 14. Accordingly, the Settlement should be authorized pursuant to sections 363 and 1520 of the Bankruptcy Code.

WAIVER OF BANKRUPTCY RULE 6004(h)

43. Given the nature of the relief requested herein, the Foreign Representatives respectfully request a waiver of the 14-day stay under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). For the reasons described above, the relief requested is essential to maximize the value of FTX DM's estate and ample cause exists to justify a waiver of the stay period to the extent applicable.

NOTICE

44. The Foreign Representatives will provide notice of this Motion to all parties that have requested notice in this Case and the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 and/or their respective counsel, as applicable. The Foreign Representatives submit that, considering the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

45. No prior request for the relief sought in this Motion has been made to this or any other court.

[*Remainder of the page intentionally left blank*]

WHEREFORE, the Foreign Representatives request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: January 4, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Brendan J. Schlauch

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Attorneys for the Foreign Representatives of FTX Digital Markets Ltd. (in Official Liquidation)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 15
FTX DIGITAL MARKETS LTD.,[1]	)	Case No. 22-11217 (JTD)
Debtor in a Foreign Proceeding.	)	**Hearing Date: Jan. 25, 2024 at 3:30 p.m. (ET)** **Objection Deadline: Jan. 18, 2024 at 4:00 p.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on January 4, 2024, Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves (the "**Foreign Representatives**"), in their capacity as joint official liquidators and foreign representatives of FTX Digital Markets Ltd., in official liquidation in the Supreme Court of the Commonwealth of The Bahamas pursuant to the Companies (Winding Up Amendment) Act, 2011 in the Supreme Court of The Bahamas, filed the *Motion of Foreign Representatives Pursuant to Bankruptcy Rule 9019 for Entry of an Order (I) Approving the Settlement and (II) Granting Related Relief* (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that objections or responses to the relief requested in the Motion, if any, must be made in writing and filed with the Court on or before **January 18, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion, if required, will be held before The Honorable John T. Dorsey, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801, on **January 25, 2024 at 3:30 p.m. (prevailing Eastern Time)**.

[1] FTX Digital Markets Ltd. (in Official Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 4, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Brendan J. Schlauch

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Attorneys for the Foreign Representatives of FTX Digital Markets Ltd. (in Official Liquidation)

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered) **Ref No. __**
In re: FTX DIGITAL MARKETS LTD.,[2] Debtor in a Foreign Proceeding.	Chapter 15 Case No. 22-11217 (JTD) **Ref No. __**

ORDER AUTHORIZING AND APPROVING THE DEBTORS' AND FTX DM'S ENTRY INTO, AND PERFORMANCE OF THEIR OBLIGATIONS UNDER, (I) THE GLOBAL SETTLEMENT AGREEMENT AND (II) THE LOAN AGREEMENT

Upon the motion (the "Debtors' Motion") of FTX Trading Ltd. ("FTX Trading") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), for entry of an order (this "Order") authorizing and approving the Debtors' entry into, and performance of their obligations under, (a) the Global Settlement Agreement, which is attached to this Order as Exhibit A, and (b) the Loan Agreement, which is attached to this Order as Exhibit B and the motion (together with the Debtors' Motion, the "Motions") of the Joint Official Liquidators of

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson's Commercial Complex, Friars Hill Road, St. John's, Antigua and Barbuda.

[2] FTX Digital Markets Ltd. (in Official Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

FTX Digital Markets Ltd. (in Official Liquidation), for entry of an order (a) approving the settlement and (b) granting related relief;[3] and this Court having jurisdiction to consider the Motions pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases, the above-captioned Chapter 15 case and the Motions in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motions and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motions having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motions and upon the record of the Motions and supporting documents; and this Court having found and determined that the relief set forth in this Order is in the best interests of the Debtors, FTX DM, and their respective estates, creditors and other parties in interest; and that the Settlement is fair and reasonable; and that the legal and factual bases set forth in the Motions and any accompanying declarations establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motions are GRANTED as set forth herein.

2. The Debtors' and FTX DM's entry into the Global Settlement Agreement is authorized and approved. The terms of the Global Settlement Agreement are approved in their

[3] Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motions.

entirety. The Debtors and FTX DM are authorized to act and perform in accordance with the terms of the Global Settlement Agreement.

3. FTX Trading's and FTX DM's entry into the Loan Agreement is authorized and approved. The terms of the Loan Agreement are approved in their entirety. FTX Trading and FTX DM are authorized to act and perform in accordance with the terms of the Loan Agreement.

4. The Global Settlement Agreement and the Loan Agreement and any related agreements, documents or instruments may be modified, supplemented or waived by the parties thereto in accordance with the terms thereof, in each case without further order of the Court.

5. The failure to specifically include or reference any particular term or provision of the Global Settlement Agreement or the Loan Agreement in this Order shall not diminish or impair the effectiveness of such term or provision.

6. The Debtors and the Foreign Representatives are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

7. The requirements set forth in Bankruptcy Rule 6004(a) are waived.

8. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

9. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motions or the implementation of this Order.

Exhibit B

Global Settlement Agreement

GLOBAL SETTLEMENT AGREEMENT

This GLOBAL SETTLEMENT AGREEMENT (including all exhibits, annexes, and schedules attached hereto in accordance with Section 10.03 hereof, this "Agreement") is made and entered into as of December 19, 2023 (the "Execution Date"), by and among FTX Trading Ltd. ("FTX Trading") and its affiliated debtors and debtors-in-possession (including, for the avoidance of doubt, FTX Property Holdings Ltd. ("PropCo") (collectively, the "Debtors") and FTX Digital Markets Ltd. ("FTX DM") acting by the JOLs (as defined below) as agents and without personal liability. The Debtors and FTX DM are collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, on November 10, 2022, (a) the Securities Commission of The Bahamas (the "SCB") filed a petition for the winding up of FTX DM with the Supreme Court of The Bahamas (the "Bahamas Court") and (b) the Bahamas Court ordered a provisional liquidation proceeding for FTX DM (the "Provisional Liquidation");

WHEREAS, on November 11 and November 14, 2022, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"), commencing the chapter 11 cases that are being jointly administered under the caption *In re FTX Trading Ltd.*, *et al.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2023) (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on November 15, 2022, FTX DM filed a petition for recognition of the Provisional Liquidation as a foreign main proceeding under chapter 15 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York and on November 28, 2022, the Bankruptcy Court entered an agreed order to transfer venue to the Bankruptcy Court under the caption *In re: FTX Digital Markets LTD., Debtor in a Foreign Proceeding*, Case No. 22-11217 (JTD) (the "Chapter 15 Case");

WHEREAS, between November and December 2022, FTX DM and the Debtors had various disputes that ultimately were sought to be resolved with a settlement and cooperation agreement (the "Cooperation Agreement") that was executed on January 6, 2023;

WHEREAS, on February 14, 2023, the Bahamas Court granted an order recognizing Mr. Kurt Knipp to act in The Bahamas on behalf of or in the name of Debtors Alameda Research LLC, Alameda Research Ltd., Clifton Bay Investments LLC, FTX Trading Ltd., Maclaurin Investments Ltd., West Realm Shires Inc. and West Realm Shires Services Inc.;

WHEREAS, on February 15, 2023, the Bankruptcy Court entered an order recognizing the Provisional Liquidation as a foreign main proceeding under chapter 15 of the Bankruptcy Code;

WHEREAS, on March 19, 2023, the Debtors commenced an adversary proceeding against FTX DM and the JOLs in *Alameda Research LLC, et al.* v. *FTX Digital Markets Ltd., et al.*, Adv. Pro. No. 23-50145 (JTD) [D.I. 1119] (the "Adversary Proceeding");

WHEREAS, FTX DM and the JOLs disputed the Debtors' allegations and asserted counterclaims against the Debtors in the Adversary Proceeding;

WHEREAS, on March 29, 2023, FTX DM filed a motion in the Chapter 11 Cases seeking an order from the Bankruptcy Court clarifying that the automatic stay does not apply or, in the alternative, for relief from the automatic stay to file an application in the Provisional Liquidation to resolve certain novel and complex legal issues regarding FTX DM's relationship to the FTX.com Exchange (as defined below) and its customers (the "Lift Stay Motion");

WHEREAS, on June 20, 2023, the Bankruptcy Court entered an order denying the Lift Stay Motion and ordered the parties to mediate;

WHEREAS, on November 10, 2023, the Bahamas Court granted an order that, among other things, (a) appointed the JOLs as joint official liquidators of FTX DM and (b) determined that FTX DM be wound up in accordance with the Bahamas Companies Act;

WHEREAS, the Debtors and FTX DM commenced mediation and have sought consensual extensions of the time to respond to claims and counterclaims asserted in the Adversary Proceeding;

WHEREAS, the Parties have engaged in good faith, arm's-length negotiations over a period of many months regarding the terms of a global settlement to resolve all disputes between the Parties and the mutual support to their respective insolvency proceedings;

WHEREAS, the Debtors have provided the JOLs access to certain pre- and post-filing books, records, and analyses of the Debtors regarding the accounts of FTX DM and the Debtors;

WHEREAS, the JOLs have reviewed such books, records, and analyses and have concluded that FTX.com Exchange (as defined below) records are so commingled (both as between Dotcom Customers' funds and as between FTX DM and the Debtors) that neither the accounts of FTX DM and the Debtors nor those of individual Dotcom Customers can be recreated, and that tracing of assets and funds is not feasible;

WHEREAS, each Party has an interest in avoiding the uncertainty, delay, cost and expense that is associated with litigation of the disputes between the Parties, including the novel legal, factual and equitable issues raised in connection with the Adversary Proceeding, the Lift Stay Motion, the Cooperation Agreement, the DM Liquidation and the Chapter 11 Cases, generally;

WHEREAS, without any admission by either Party, each Party desires to settle all disputes between them, including the Adversary Proceeding, and to express to the other Party its support and commitment with respect to the other Party's insolvency and any related or ancillary proceedings; and

WHEREAS, the Parties have agreed to take certain actions in support of the global settlement governed by this Agreement (the "Global Settlement") on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

Article I. Definitions and Interpretation

Section 1.01 Definitions. The following terms shall have the following definitions:

"Acceptable DM Liquidation" means a liquidation of FTX DM proposed by the JOLs that is consistent with this Agreement.

"Acceptable Plan" means a Chapter 11 Plan proposed by the Debtors that (a) is consistent with this Agreement, including the provisions with respect to FTX DM and PropCo, and incorporates the releases set forth in Article IX; (b) taken as a whole, treats holders of FTX.com Customer Entitlement Claims not materially less favorably than as contemplated by the Plan Term Sheet, (c) includes post-Plan Effective Date governance that is reasonably acceptable to FTX DM, and (d) is otherwise reasonably acceptable to FTX DM.

"Administrative Expenses" means reasonable past documented, and reasonable estimates of future fees, costs, charges, liabilities and other expenses incurred or to be incurred in the course of the DM Liquidation or the Chapter 11 Cases (as the case may be), including such sums incurred in pursuing DM-Controlled Recovery Actions or Debtors-Controlled Recovery Actions (as the case may be) and, in the case of the DM Liquidation, all expenses listed in O.20 r.1(1) of the Bahamas Companies Liquidation Rules 2012 and s.204 of the Bahamas Companies Act and, in the case of the Chapter 11 Debtors, any costs or expenses of administration of the Chapter 11 Cases of a kind specified under section 503 of the Bankruptcy Code.

"Admitted" means, with respect to any Claim in the DM Liquidation, that such Claim has been admitted as a proof in the DM Liquidation pursuant to section 235 of the Bahamas Companies Act.

"Advance DM Loan" means a loan made by FTX Trading to FTX DM under the Loan Agreement, dated as of the date hereof, between FTX Trading, as lender, and FTX DM, a borrower.

"Adversary Proceeding" has the meaning set forth in the recitals to this Agreement.

"Adversary Proceeding Parties" has the meaning set forth in Section 7.01.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative

meanings, the terms "controlling," "controlled by," and "under common control with"), as used with respect to any Entity, shall mean the possession, directly or indirectly, of the right or power to direct or cause the direction of the management or policies of such Entity, whether through the ownership of voting securities, by agreement, or otherwise.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Agreement Effective Period" means the period from the Initial Settlement Effective Date to the Termination Date.

"Allowed" has the meaning set forth in the Chapter 11 Plan.

"Applicable Petition Date" means (a) with respect to the Debtors, November 11, 2022 and (b) with respect to FTX DM, November 10, 2022.

"Bahamas Approval Orders" has the meaning set forth in Section 4.01(a).

"Bahamas Bar Date" has the meaning set forth in Section 5.01.

"Bahamas Code" means the Bahamas Companies Act, Companies Liquidation Rules, 2012 and Insolvency Practitioners' Rules, 2012.

"Bahamas Companies Act" means The Bahamas' Companies Act (as amended by *inter alia* the Companies (Winding Up Amendment) Act, 2011).

"Bahamas Court" has the meaning set forth in the recitals to this Agreement.

"Bahamas Customer" means a Dotcom Customer that has made a valid Opt-In Election.

"Bahamas Properties" has the meaning set forth in Section 2.04(a).

"Bankruptcy Code" has the meaning set forth in the recitals to this Agreement.

"Bankruptcy Court" has the meaning set forth in the recitals to this Agreement.

"Business Day" means any day other than a Saturday, Sunday, public holiday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York or in Nassau, The Bahamas.

"Cause of Action" means any action, Claim, cause of action, controversy, demand, right, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, right of subordination, netting, recoupment and franchise of any kind or character whatsoever, whether known, unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in contract or in tort, in law or in equity, or pursuant to any other theory of law.

"Chapter 11 Approval Orders" has the meaning set forth in Section 3.01(a).

"Chapter 11 Cases" has the meaning set forth in the recitals to this Agreement.

"Chapter 11 Plan" means a joint plan of reorganization (including any supplement thereto and all exhibits, annexes, and schedules attached thereto) proposed by the Debtors in the Chapter 11 Cases pursuant to section 1121(a) of the Bankruptcy Code.

"Chapter 11 Schedules" means the schedules of assets and liabilities filed by the Debtors in the Chapter 11 Cases, each as may be amended, supplemented or modified from time to time.

"Chapter 15 Case" has the meaning set forth in the recitals.

"Claim" with respect to any Debtor, has the meaning ascribed to it in section 101(5) of the Bankruptcy Code, and with respect to FTX DM, has the meaning ascribed to it in section 235 of the Bahamas Companies Act.

"Class 5A Cumulative Distribution Percentage" means, on any distribution date, the amount expressed as the cumulative percentage determined by the Debtors to be distributable on Allowed Trading Customer Entitlement Claims as of such distribution date, taking into account distributable cash and appropriate reserves.

"Commenced KYC" means, for any Dotcom Customer who has made a valid Opt-In Election, that such Dotcom Customer shall have provided the information that is required by the KYC Procedures for the assessment of eligibility for Allowance or Admission, as applicable, of a FTX.com Customer Entitlement Claim and to receive distributions on account of such FTX.com Customer Entitlement Claim.

"Confirmation Order" means the order entered by the Bankruptcy Court confirming an Acceptable Plan in a form reasonably acceptable to FTX DM with respect to provisions that relate to FTX DM, PropCo, the JOLs, or this Agreement.

"Control Person" means any of (a) Samuel Bankman-Fried, Zixiao "Gary" Wang, Nishad Singh, Caroline Ellison, and (b) any Person with a familial relationship with any of the foregoing individuals.

"Controlling Party" means (a) with respect to a Debtors-Controlled Recovery Action, the Debtors and (b) with respect to a DM-Controlled Recovery Action, FTX DM, or the JOLs.

"Cooperation Agreement" has the meaning set forth in the recitals to this Agreement.

"Debtors" has the meaning set forth in the preamble to this Agreement.

"Debtors-Controlled Recovery Action" means any Recovery Action that is not a DM-Controlled Recovery Action; *provided* that Debtors-Controlled Recovery Actions shall not include any Recovery Action against any Released Party.

"*De Minimis* Claim" means any Claim classified and treated as a *De Minimis* Claim in the Acceptable Plan.

"Digital Asset" means a DLT Digital Asset or a Pre-Launch Cryptocurrency.

"Disputed Digital Assets" means any Digital Asset agreed between the Parties by agreement between counsel to each Party conveyed in writing (including electronic mail) between such counsel.

"DLT Digital Asset" means any digital representation of value or units that is issued or transferable using distributed ledger or blockchain technology, including stablecoins, cryptocurrency and non-fungible tokens.

"DM-Controlled Recovery Action" means a Recovery Action that: (a) the Debtors and FTX DM have agreed in writing shall constitute a DM-Controlled Recovery Action; (b) arises out of or relates to an avoidable or potentially avoidable withdrawal from the FTX.com Exchange by any Dotcom Customer (other than an Excluded Party) who is a Specified Jurisdiction Resident or a Bahamas Customer; (c) arises out of or relates to an avoidable or a potentially avoidable transfer made directly by FTX DM or PropCo to any Person other than a Dotcom Customer who is (i) not a Bahamas Customer or (ii) an Excluded Party; or (d) is a potential defense to a DM Customer Entitlement Claim; *provided* that a Recovery Action shall constitute a DM-Controlled Recovery Action for purposes of this clause (d) solely to the extent such Dotcom Customer Recovery Action is asserted by FTX DM as a defense to a DM Customer Entitlement Claim; *provided* further that DM-Controlled Recovery Actions shall not include any Recovery Action against any Released Party.

"DM Customer Entitlement Claim" means a FTX.com Customer Entitlement Claim in the DM Liquidation as a result of an Opt-In Election; *provided* that no Claim held by an Excluded Party shall constitute a DM Customer Entitlement Claim.

"DM Customer Reference Amount" means, on any distribution date, the amount expressed in U.S. Dollars that is necessary for all Eligible DM Customer Entitlement Claims receiving distributions on such distribution date to have received, on or prior to such distribution date, aggregate distributions expressed as a percentage of the face amount of such Eligible DM Customer Entitlement Claims equal to the Class 5A Cumulative Distribution Percentage.

"DM Distributable Cash" means, on any distribution date, the amount expressed in U.S. Dollars of cash and cash equivalents in the FTX DM estate after paying Administrative Expenses and establishing appropriate reserves for Administrative Expenses, excluding any cash balance in the DM Non-Customer Account that FTX DM determines to be required to satisfy in full all Admitted DM Non-Customer Claims pursuant to Section 5.03(b).

"DM Excess Claim" means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, rule or regulation, common law or otherwise) of a Dotcom Customer arising out of or related to accounts or positions on the FTX.com Exchange, other than a DM Customer Entitlement Claim.

"DM Liquidation" means FTX DM's liquidation or winding up proceeding in The Bahamas.

"DM Non-Customer Account" means a segregated account to be opened in the name of FTX DM and funded pursuant to Section 5.03(c).

"DM Non-Customer Claim" means any Claim (including any trade or other general unsecured claim or governmental claim) filed against FTX DM that is not a DM Customer Entitlement Claim or a DM Excess Claim.

"DM Non-Customer Claims Pool" means all property in the DM Non-Customer Account.

"DOJ" means the U.S. Department of Justice.

"DOJ Seized Funds" means any funds that may be received from the DOJ relating to amounts seized from the bank accounts in the name of FTX DM at Farmington State Bank (d/b/a Moonstone Bank) and Silvergate Bank specified in Exhibit A hereto.

"Dotcom Convenience Claim" means any Claim classified and treated as Dotcom Convenience Claim in the Acceptable Plan.

"Dotcom Customer" means any customer of record on the FTX.com Exchange at any time.

"Dotcom Customer Pool" has the meaning set forth in the Plan Term Sheet.

"Dotcom Customer Preference Action" has the meaning set forth in Section 5.05(a).

"Dotcom Customer Preference Offer" has the meaning set forth in Section 5.05(a).

"Dotcom Customer Recovery Action" means any Recovery Action arising out of or related to a transfer by FTX DM or any Debtor to any Person in such Person's capacity as a Dotcom Customer.

"Eligible DM Customer Entitlement Claim" means, as of any distribution date, any DM Customer Entitlement Claim (or portion thereof) that: (a) is the subject of a valid Opt-In Election on or prior to the Bahamas Bar Date; (b) is held by a Dotcom Customer that has Commenced KYC by the KYC Cut-off Date and has satisfied the KYC Procedures in respect of itself and the Original Customer of such Customer Entitlement Claim by the applicable distribution date; and (c) either (i) has been Admitted against FTX DM in an amount not greater than the Guideline Amount; (ii) has been determined in a Joint Claims Hearing to be a Claim that would have been Allowed as a FTX.com Customer Entitlement Claim; or (iii) has been approved by the Debtors as an Eligible DM Customer Entitlement Claim, whether pursuant to Section 5.03(d)(iv) or otherwise.

"Entity" shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

"Excluded Party" means any (a) Control Person, Insider or Affiliate of a Control Person or Insider; (b) holder or subsequent transferee of such holder of a Claim against any Debtor other than a FTX.com Customer Entitlement Claim; or (c) Person or any initial or subsequent transferee of such Person against whom the Debtors determine they have any Cause of Action (other than for withdrawals of cash or Digital Assets from the FTX.com Exchange) that are identified on a schedule to be provided by the Debtors to FTX DM in accordance with Section 5.02(b).

"Excluded Preference Claim" has the meaning set forth in the Plan Term Sheet.

"Execution Date" has the meaning set forth in the preamble to this Agreement.

"Existing Confidentiality Arrangements" means the Confidentiality Arrangements between the Parties dated as of January 30, 2023, as amended, supplemented and modified from time to time.

"Fenwick Retainer Receivable" means the receivable held by FTX DM against Fenwick & West LLP in respect of a retainer in the amount of $3.5 million.

"Final Settlement Effective Date" means the Plan Effective Date.

"FTX DM" has the meaning set forth in the preamble to this Agreement.

"FTX Trading" has the meaning set forth in the preamble to this Agreement.

"FTX.com Customer Entitlement Claim" means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, under the Bankruptcy Code, the Bahamas Code, federal or state law, rule or regulation, common law or otherwise) held by any Person against any of the Debtors or FTX DM to recover or that compensates such Person for the value of cash or Digital Assets credited to an FTX.com Exchange account in the name of such Person in accordance with the calculation procedures set forth in Section 5.03(d)(ii). For the avoidance of doubt, any Claim for the appreciation in the value of a Digital Asset after the Applicable Petition Date is not a FTX.com Customer Entitlement Claim and, if against FTX DM, shall constitute a DM Excess Claim.

"FTX.com Exchange" means the FTX.com trading platform.

"FTX.com Exchange Assets Buyer" means any entity that acquires assets from the Debtors pursuant to the FTX.com Exchange Asset Sale Transaction.

"FTX.com Exchange Asset Sale Transaction" means any transaction or series of transactions approved by the Bankruptcy Court involving the sale, disposition or other monetization of property of the Debtors associated with the FTX.com Exchange (whether alone or together with any other assets of the Debtors) or any other transaction that would permit the

Debtors, a successor thereof, or an acquirer of any assets associated with the FTX.com Exchange to operate an offshore platform not available to U.S. investors.

"FTX.com Exchange Intellectual Property" means the following, as used in, related to or associated with the FTX.com Exchange, all intellectual property and other similar proprietary rights arising in any jurisdiction of the world, whether registered or unregistered, including in and to any of the following: (a) Trademarks; (b) patents and patent applications, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, re-examinations, extensions and reissues; (c) trade secrets, know-how, customer lists and other proprietary rights in confidential information; (d) published and unpublished works of authorship, whether copyrightable or not, including data and databases, web code, copyrights, applications and registrations therefor, and renewals, extensions, restorations and reversions thereof; and (e) Internet domain names, social media identifiers and URLs. Without limiting the foregoing, FTX.com Exchange Intellectual Property includes the "FTX" Trademark and any derivatives or variations thereof, including any Internet domain names, social media identifiers and URLs that incorporate any of the foregoing.

"Global Settlement" has the meaning set forth in the recitals to this Agreement.

"Guideline Amount" means, for any DM Customer Entitlement Claim, (a) the USD Equivalent of the cash and Digital Assets set forth in the Chapter 11 Schedules calculated as of the Chapter 11 Petition Date (without any adjustment for subsequent changes in value of any Digital Assets) *minus* (b) for any Dotcom Customer with Net Preference Exposure greater than $250,000, 15% of any Net Preference Exposure attributable to the holder of such FTX DM Customer Entitlement Claim on the books and records of the Debtors.

"Ineligible DM Customer Entitlement Claim" means any DM Customer Entitlement Claim (or portion thereof) that is not an Eligible DM Customer Entitlement Claim.

"Initial Settlement Effective Date" means the first date on which all Bahamas Approval Orders, Chapter 11 Approval Orders have been entered.

"Insider" has the meaning set forth in section 101(31) of the Bankruptcy Code and includes any non-statutory insiders of the Debtors and affiliates of the Debtors.

"JIN Guidelines" mean the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network in October 2016 as reflected in Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 9029-2.

"Joint Claims Hearing" means a hearing jointly conducted by the Bankruptcy Court and the Bahamas Court in accordance with the JIN Guidelines to determine whether a DM Customer Entitlement Claim (or portion thereof) constitutes an Eligible DM Customer Entitlement Claim.

"JOLs" means, at any time, Brian C. Simms KC, Kevin G. Cambridge and Peter Greaves in their capacity as joint and several official liquidators of FTX DM (and in their capacity as joint and several provisional liquidators, where applicable) together with any

additional or successor Person or Persons who take or hold office as joint official liquidators of FTX DM.

"KYC Cut-off Date" means the date that is the later of (a) ninety (90) days after the Opt-In Deadline and (b) thirty (30) days after the Plan Effective Date or such other date as may be ordered by the Bankruptcy Court.

"KYC Procedures" has the meaning set forth in Section 5.08(a).

"Law" means any federal, state, local, Bahamas or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court and the Bahamas Court).

"Lift Stay Motion" has the meaning set forth in the recitals to this Agreement.

"Net Preference Exposure" has the meaning set forth in the Plan Term Sheet.

"Non-Controlling Party" means (a) with respect to a Debtors-Controlled Recovery Action, FTX DM and the JOLs; and (b) with respect to a DM-Controlled Recovery Action, the Debtors.

"Opt-In Deadline" means the Bahamas Bar Date.

"Opt-In Election" has the meaning set forth in Section 5.02(a).

"Original Customer" means, with respect to a DM Customer Entitlement Claim, the Holder of such FTX.com Customer Entitlement Claim as of November 10, 2022.

"Party" has the meaning set forth in the preamble to this Agreement.

"Person" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any governmental authority.

"Plan Effective Date" means the date on which the last condition to the effectiveness of an Acceptable Plan has been satisfied or waived in accordance with the terms thereof and such Acceptable Plan becomes effective.

"Plan Term Sheet" means the term sheet attached to the Plan Support Agreement filed by the Debtors in the Chapter 11 Cases on October 16, 2023 [D.I. 3291].

"Pre-Launch Cryptocurrency" means an asset that would have been a DLT Digital Asset but for the fact that such asset has not been issued and is not transferable using distributed ledger or blockchain technology as of November 11, 2022.

"PropCo" has the meaning set forth in the preamble to this Agreement.

"PropCo Ordinary Course Claim" means any prepetition Claim against PropCo arising in the ordinary course in respect of the ownership, use, sale or transfer of the Bahamas Properties.

"Properties Exclusive Sales Agency Agreement" means the Properties Exclusive Sales Agency Agreement, dated as of the date hereof, between FTX Trading, PropCo and FTX DM.

"Properties Sales Procedures" has the meaning set forth in Section 2.04(a).

"Provisional Liquidation" has the meaning set forth in the recitals to this Agreement.

"Recovery Action" means any actual or potential Cause of Action (a) arising out of or relating to a transfer of property or the incurrence of an obligation or any distribution or other transaction made by or on behalf of the Debtors or FTX DM, or their estates or creditors, under (i) sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) or other applicable sections of the Bankruptcy Code, (ii) sections 228, 229, 230, 236, 241, 242, 243, and 244 of the Bahamas Code or (iii) similar or related local, state, federal, or foreign statutes and common law, including preferential and fraudulent transfer laws or (b) that may be asserted by any of the Debtors or FTX DM against an officer, director, fiduciary, insurer, or any other Person or Entity; *provided* that no Cause of Action shall constitute a Recovery Action to the extent such Cause of Action is (A) asserted by a Debtor against FTX DM, (B) asserted by FTX DM against a Debtor or (C) asserted by any Debtor or FTX DM against a governmental authority with respect to Taxes.

"Released Parties" has the meaning set forth in Section 9.01.

"Releasing Parties" has the meaning set forth in Section 9.01.

"SCB" has the meaning set forth in the recitals to this Agreement.

"Specified Jurisdiction Resident" means any Person that is listed in the customer records of the FTX.com Exchange as a resident in any jurisdiction listed in Exhibit B hereto.

"Stipulated Debtors Property" means any interest in property of the Debtors or FTX DM (including the Disputed Digital Assets) other than Stipulated DM Property.

"Stipulated DM Property" means the assets, interests, rights or property, as the case may be, listed in Exhibit C hereto.

"Stipulated PropCo Claim" has the meaning set forth in Section 2.04(b).

"Taxes" means (a) any and all federal, state, Bahamian, local or foreign contributions, taxes, fees, imposts, duties and similar governmental charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental unit, including any taxes on income, profits or gross receipts, ad valorem, value added, capital gains, sales, excise, use, real property, withholding,

estimated, social security, housing fund, retirement fund, profit sharing, customs, import duties and fees and any other governmental contributions, and (b) any transferee or successor liability in respect of any items described in clause (a) above.

"Termination Date" means the date on which termination of this Agreement as to a Party is effective in accordance with Article VIII.

"Trademarks" means any trademarks, service marks, logos, symbols, trade names, and other indicia of origin, applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby.

"Trading Customer Entitlement Claim" means any FTX.com Customer Entitlement Claim that is not (a) a DM Customer Entitlement Claim, (b) a Dotcom Convenience Claim, or (c) a *De Minimis* Claim.

"USD Equivalent" of any cash or Digital Assets means the value in U.S. Dollars determined by order of the Bankruptcy Court to be applicable to such cash or Digital Assets for purposes of the allowance of Claims in the Chapter 11 Cases.

Section 1.02 Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and the neutral gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference in this Agreement to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) any capitalized terms in this Agreement that are defined with reference to another agreement are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date of this Agreement;

(e) if any payment, distribution, act or deadline under this Agreement is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date;

(f) unless otherwise specified, all references in this Agreement to "Sections" are references to Sections of this Agreement;

(g) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(h) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(i) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(j) the use of "include" or "including" is without limitation, whether stated or not;

(k) all references to "$" and "dollars" will be deemed to refer to United States currency unless otherwise specifically provided; and

(l) the word "or" shall not be exclusive.

Article II. Disputed Property

Section 2.01 Allocation of Disputed Property. The Parties agree that, on the Final Settlement Effective Date, (a) all right, title and interest of the Parties in the Stipulated DM Property shall vest with the estate of FTX DM free and clear of all Claims and interests of the Debtors and (b) all right, title and interest of the Parties in the Stipulated Debtors Property shall vest with the estate of the Debtors free and clear of all Claims and interests of FTX DM. Each Party shall take such commercially reasonable actions as may be reasonably requested by the other Party to give effect to this Section 2.01. Except as otherwise provided in this Agreement, each Party shall be responsible for all Taxes and out-of-pocket costs and expenses incurred on or after the Final Settlement Effective Date with respect to the property allocated to it hereby.

Section 2.02 Conduct of Litigation Involving Third Parties.

(a) DM-Controlled Recovery Actions. As between the Parties, FTX DM shall have the right to manage and control the prosecution of the DM-Controlled Recovery Actions, including any decision to investigate, assert, resolve or settle such DM-Controlled Recovery Actions in whole or in part; *provided* that FTX DM shall consult with the Debtors prior to the settlement of any material DM-Controlled Recovery Action.

(b) Debtors-Controlled Recovery Actions. As between the Parties, the Debtors shall have the right to manage and control the prosecution of any Debtors-Controlled Recovery Actions, including any decision to investigate, assert, prosecute, resolve or settle such Debtors-Controlled Recovery Actions in whole or in part; *provided* that the Debtors shall consult with FTX DM prior to the settlement of any material Debtors-Controlled Recovery Action.

(c) Cooperation in Respect of Recovery Actions. The Parties shall cooperate and use commercially reasonable efforts to maximize recoveries from all Recovery Actions. Upon request by the Controlling Party, subject to the Bankruptcy Court or Bahamas Court

approval, if required, the Non-Controlling Party shall take such actions, or refrain from taking such actions, with respect to a Recovery Action as may be requested by the Controlling Party, in the reasonable discretion of the Controlling Party, from time to time. Subject to the Bankruptcy Court or Bahamas Court approval, if required, the Non-Controlling Party shall cooperate with the Controlling Party in connection with the investigation, assertion, prosecution, resolution and settlement of any Recovery Action, including (i) making available to the Controlling Party and its advisors relevant records and information (subject in all respects to the terms of the Existing Confidentiality Arrangements and Section 2.03 hereof) and (ii) participating in litigation as a plaintiff, co-plaintiff or other appropriate party, in each case as may be reasonably necessary for the Controlling Party to investigate, assert, prosecute, resolve or settle such Recovery Action; *provided* that the Controlling Party shall be responsible for any and all adverse costs ordered and shall indemnify the Non-Controlling Party (including, with respect to FTX DM, the JOLs, and with respect to the Debtors, the Debtors' directors and officers) for such costs. The Non-Controlling Party shall not object to, delay, impede, or take any other action to interfere with any Recovery Action controlled by the Controlling Party. Except as provided in this Section 2.02(c), the Parties shall each bear their own costs and expenses in connection with any Recovery Actions, whether or not the Controlling or the Non-Controlling Party.

Section 2.03 Information Sharing. Subject in all respects to the terms of the Existing Confidentiality Arrangements, the Parties agree to share information in their possession concerning the matters contemplated by this Agreement, including, in respect of: (a) any Stipulated DM Property or Stipulated Debtors Property; (b) any Recovery Action; (c) the negotiation, solicitation, confirmation, approval or consummation of an Acceptable Plan and an Acceptable DM Liquidation and all material developments in matters relating thereto; (d) FTX.com Customer Entitlement Claims, and distributions relating thereto; (e) Opt-In Elections and the exercise thereof; (f) Administrative Expenses; and (g) any other information that is reasonably requested by the other Party for the administration of their Estate; *provided* that nothing in this Agreement shall oblige a Party to share privileged materials with the other Party or share any information in violation of applicable Law or any confidentiality arrangement binding such Party at the time of such request.

Section 2.04 PropCo.

(a) Bahamas Properties Sales Process. Each Party agrees to the joint process set forth in the Properties Exclusive Sales Agency Agreement for the prompt cash sale of real estate owned by PropCo in The Bahamas (the "Bahamas Properties") free and clear of all Claims and interests of creditors of the Parties' estates (the "Properties Sales Procedures").

(b) Allowance of PropCo Claim. The Parties stipulate that, effective as of the Final Settlement Effective Date, a Claim of FTX DM against PropCo (the "Stipulated PropCo Claim") shall be stipulated and Allowed as an unsecured, unsubordinated, prepetition Claim in the amount of $256,291,221.47; *provided* that the Stipulated PropCo Claim shall be subordinated to the PropCo Ordinary Course Claims. In no event shall FTX DM assert the Stipulated PropCo Claim against any other Debtor.

(c) Objection to Claims Against PropCo. The Debtors shall, in consultation with FTX DM, object to and contest any and all Claims asserted in the Chapter 11 Cases against

PropCo (other than the Stipulated PropCo Claim, any PropCo Ordinary Course Claim, or any Claim for an Administrative Expense of PropCo), and shall not settle such Claim without the prior written consent of FTX DM or make any distribution to the holder of such Claim without the prior written consent of FTX DM or order of the Bankruptcy Court. The Debtors shall use reasonable commercial efforts to file objections to Claims against PropCo in accordance with this Section 2.04(c) before the Plan Effective Date. In the event that the aggregate amount of Allowed Claims and Claims for Administrative Expenses of PropCo that are senior to or *pari passu* with the Stipulated PropCo Claim exceeds $50 million, then the amount of cash to be transferred by the Debtors to DM in accordance with Exhibit C hereto shall be increased by an amount equal to (i) the amount that would have been distributed to FTX DM from the PropCo estate had the aggregate amount of Allowed Claims and Claims for Administrative Expenses of PropCo that are senior to or *pari passu* with the Stipulated PropCo Claim been $50 million *minus* (ii) the amount actually distributed to FTX DM from the PropCo estate.

(d) Distributions of Proceeds on and after the Final Settlement Effective Date. PropCo shall be treated separately under the Chapter 11 Plan and not substantively consolidated with any other Debtor. FTX DM agrees that it shall not sell, transfer or assign any interest, directly or indirectly, in the Stipulated PropCo Claim without the prior written consent of the Debtors (and any purported assignment without consent shall be null and void). FTX DM agrees that it shall apply all net proceeds received on the Stipulated PropCo Claim in accordance with the terms and conditions of this Agreement.

Section 2.05 Monetization and Transfer of Assets.

(a) Prompt Transfer of Digital Assets held by the SCB. FTX DM shall use commercially reasonable efforts to obtain the return of the Digital Assets held by the SCB. Upon such return, FTX DM shall transfer all such Digital Assets to the Debtors.

(b) Realization of Assets. Each Party shall cooperate and use commercially reasonable efforts to assist (including by providing any consents or authorizations) the other Party in the prompt realization of assets allocated to the other Party under Section 2.01, including, with respect to the transfer of the Disputed Digital Assets, the release of the DOJ Seized Funds to FTX DM's estate, and in monetizing the Bahamas Properties.

(c) Application of Funds at FTX DM. FTX DM shall apply cash and other property it controls solely to pay (subject to approval by the Bahamas Court) or reserve for Administrative Expenses of FTX DM, in each case, after ten (10) days advance notice to the Debtors; *provided* that, after the Final Settlement Effective Date, FTX DM may also apply Stipulated DM Property to pay or reserve for Administrative Expenses or make distributions in the DM Liquidation in accordance with this Agreement and applicable Law. FTX DM shall provide such historical financial information and projections to the Debtors as the Debtors may reasonably request from time to time.

Section 2.06 FTX.com Exchange Asset Sale Transaction.

(a) The Debtors shall consult with FTX DM in respect to any FTX.com Exchange Asset Sale Transaction.

(b) In the event of an FTX.com Exchange Asset Sale Transaction within two (2) years from the Execution Date, at the request of FTX Trading (on behalf of the Debtors) and subject to receipt of any necessary governmental or regulatory approvals, FTX DM shall, effective immediately upon closing of any FTX.com Exchange Asset Sale Transaction, transfer, assign, convey, and deliver to, at FTX Trading's election, either (i) the FTX.com Exchange Assets Buyer or (ii) FTX Trading (for immediate transfer, assignment, conveyance and delivery by FTX Trading to the FTX.com Exchange Assets Buyer), in each case, for no additional consideration, all of FTX DM's right, title and interest in and to any FTX.com Exchange Intellectual Property, free and clear of all claims and interests of FTX DM for application pursuant to an Acceptable Plan. To the extent required under applicable Law, FTX DM shall file applications to obtain orders from the Bahamas Court, in form and substance reasonably satisfactory to the Debtors, authorizing such transfer, assignment, conveyance and delivery. Upon and following the foregoing assignment, FTX DM shall not use or otherwise exploit any FTX.com Exchange Intellectual Property. For the avoidance of doubt, no licenses or registrations held by FTX DM under the Digital Assets and Registered Exchanges Act enacted by the Parliament of The Bahamas shall be transferred, assigned, conveyed or delivered pursuant to this Section 2.06(b). Any Taxes, out-of-pocket costs and expenses incurred by FTX DM in respect of this Section 2.06(b) shall be borne by the Debtors.

(c) FTX DM shall not transfer, assign, convey, sell, dispose of, lease, license, mortgage, pledge, encumber, or divest any licenses or registrations held by FTX DM under the Digital Assets and Registered Exchanges Act enacted by the Parliament of The Bahamas. FTX DM shall not consent to and shall object to any such transfer, assignment, conveyance, sale, disposition, lease, license, mortgage, pledge, encumbrance, or divestiture.

Article III. The Chapter 11 Plan

Section 3.01 Debtors' Commitments. During the Agreement Effective Period, the Debtors shall use commercially reasonable efforts to:

(a) provide access to the pre- and post-filing books and records of the Debtors as reasonably requested by the JOLs in connection with the Bahamas Approval Orders and any related submissions to the Bahamas Court, subject to any applicable privileges;

(b) by no later than January 10, 2024, file with the Bankruptcy Court motions seeking orders, each in form and substance reasonably satisfactory to FTX DM, approving (i) this Agreement; (ii) the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures; and (iii) the Advance DM Loan (the "Chapter 11 Approval Orders"); *provided* that the Debtors agree to file the motion seeking an order from the Bankruptcy Court approving the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures as soon as practicable;

(c) pursue solicitation, confirmation, approval, and consummation of an Acceptable Plan;

(d) to the extent any legal or structural impediment arises that would prevent, hinder, or delay solicitation, confirmation, approval, or consummation of an Acceptable Plan, support and take all steps reasonably necessary and desirable to address any such impediment;

(e) obtain any and all required governmental, regulatory and third-party approvals for the implementation or consummation of an Acceptable Plan;

(f) timely file a formal objection to any motion filed with the Bankruptcy Court by any Person seeking the entry of an order for relief that (i) is inconsistent with this Agreement in any material respect or (ii) would, or would reasonably be expected to, frustrate the purposes of this Agreement, including by preventing the consummation of an Acceptable Plan;

(g) give FTX DM prior notice of any motion or other pleading concerning this Agreement or any of the matters contemplated hereby that is filed on behalf of the Debtors with any court in the United States;

(h) establish appropriate reserves to make payments to FTX DM that are required under this Agreement; and

(i) not file any motion or pleading (or support any motion or pleading filed by any other Person) with the Bankruptcy Court that, in whole or in part, is materially inconsistent with this Agreement or an Acceptable Plan.

Section 3.02 FTX DM's Commitments. During the Agreement Effective Period, FTX DM shall use commercially reasonable efforts to:

(a) provide access to the pre- and post-filing books and records of FTX DM as reasonably requested by the Debtors in connection with the Chapter 11 Approval Orders, the Chapter 11 Plan, and any related submissions to the Bankruptcy Court, subject to any applicable privileges;

(b) support solicitation, confirmation, approval, and consummation of an Acceptable Plan, including by voting the Stipulated PropCo Claim to accept an Acceptable Plan;

(c) to the extent any legal or structural impediment arises that would prevent, hinder, or delay solicitation, confirmation, approval, or consummation of an Acceptable Plan, support the Debtors in all reasonably necessary and desirable steps to address any such impediment;

(d) not object to, delay, impede, or take any other action to interfere with (i) solicitation, confirmation, approval, and consummation of an Acceptable Plan or (ii) any motion, application or other pleading or document filed by the Debtors in the Bankruptcy Court that is not inconsistent with this Agreement;

(e) not take or agree to take any action to support or facilitate in any manner any chapter 11 plan other than an Acceptable Plan; and

(f) not file any motion or pleading (or support any motion or pleading filed by any other Person) with the Bankruptcy Court that, in whole or in part, is materially inconsistent with this Agreement or an Acceptable Plan.

Article IV. The DM Liquidation

Section 4.01 FTX DM's Commitments. During the Agreement Effective Period, FTX DM shall use commercially reasonable efforts to:

(a) by no later than January 10, 2024, (x) file applications to obtain orders from the Bahamas Court, each in form and substance reasonably satisfactory to the Debtors sanctioning (i) this Agreement; (ii) the Properties Exclusive Sales Agency Agreement and the PropCo Sale Procedures; and (iii) the Advance DM Loan and (y) file a motion to approve this Agreement in the Bankruptcy Court with respect to the Chapter 15 Case (the "Bahamas Approval Orders"); *provided* that FTX DM agrees to file the application seeking an order from the Bahamas Court sanctioning the Properties Exclusive Sales Agency Agreement and the Properties Sales Procedures as soon as practicable;

(b) promptly conduct an Acceptable DM Liquidation;

(c) to the extent any legal or structural impediment arises that would prevent, hinder, or delay an Acceptable DM Liquidation, support and take all steps reasonably necessary and desirable to address any such impediment;

(d) obtain any and all required governmental, regulatory and third-party approvals for the implementation or consummation of this Agreement;

(e) timely file a formal objection to any pleading filed with the Bahamas Court by any Person seeking the entry of an order for relief that (i) is inconsistent with this Agreement in any material respect or (ii) would, or would reasonably be expected to, frustrate the purposes of this Agreement, including by preventing the consummation of an Acceptable DM Liquidation;

(f) give the Debtors prior notice of any report, motion, application, summons, petition or other pleading concerning this Agreement or any of the matters contemplated hereby that is filed on behalf of FTX DM with any court in The Bahamas;

(g) facilitate the Debtors' appearance, attendance and participation in any and all proceedings before any court in The Bahamas that concerns this Agreement or any of the matters contemplated hereby; and

(h) not file any motion, application, summons, petition, or pleading (or support any motion, application, summons, petition, or pleading filed by any other Person) with the Bahamas Court that, in whole or in part, is materially inconsistent with this Agreement or an Acceptable DM Liquidation.

Section 4.02 Debtors' Commitments. During the Agreement Effective Period, the Debtors shall use commercially reasonably efforts to:

(a) support FTX DM's efforts in obtaining the Bahamas Approval Orders;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the Global Settlement, to support and take all steps reasonably necessary and desirable to address any such impediment;

(c) not object to, delay, impede, or take any other action to interfere with (i) the Acceptable DM Liquidation or (ii) any motion, application or other pleading or document filed by FTX DM in the Bahamas Court that is not inconsistent with this Agreement;

(d) not take or agree to take any action to support or facilitate in any manner a liquidation other than an Acceptable DM Liquidation; and

(e) not file any motion or pleading (or support any motion, application, summons, petition, or pleading filed by any other Person) with the Bahamas Court that, in whole or in part, is materially inconsistent with this Agreement.

Article V. Claims, Distributions and Inter-Estate Funding

Section 5.01 The Bahamas Bar Date. FTX DM shall establish May 15, 2024, or such other date as the Parties may reasonably agree, as a bar date for Claims against FTX DM (the "Bahamas Bar Date"). Except as required under applicable Law, FTX DM shall not seek to move or alter the Bahamas Bar Date without the prior written consent of the Debtors, not to be unreasonably withheld.

Section 5.02 Responsibility for FTX.com Customer Entitlement Claims.

(a) Opt-In Election. In connection with the solicitation of an Acceptable Plan, the Parties shall provide each Dotcom Customer, other than Excluded Parties or the Dotcom Customer specified in the last sentence of Section 5.03(d)(v), the right to irrevocably elect by the Opt-In Deadline to have all (but not less than all) FTX.com Customer Entitlement Claims set forth in a Ballot in the Chapter 11 Cases or in a proof of debt in the DM Liquidation, as applicable, withdrawn with prejudice from the Chapter 11 Cases and administered, reconciled, valued, settled, adjudicated, resolved and satisfied in the DM Liquidation. Each Dotcom Customer may exercise the Opt-In Election either by election on its ballot in the Chapter 11 Cases or by executing and filing a proof of debt in the DM Liquidation containing a waiver of any such Dotcom Customer's Entitlement Claim against the Chapter 11 Debtors (an "Opt-In Election"). The applicable portions of such ballots, proof of debt and the related disclosures made by the Parties about the Opt-In Election shall be in form and substance reasonably satisfactory to each Party.

(b) Excluded Parties. Excluded Parties shall not be eligible to exercise the Opt-In Election. The Debtors shall provide FTX DM with an initial list of Excluded Parties by no later than the mailing of ballots for the Chapter 11 Plan. The Debtors may supplement or modify such list from time to time up to the thirtieth (30th) day following the Bahamas Bar Date, at which time the list of Excluded Parties shall be final and binding on both Parties.

(c) Allocation of Responsibility for FTX.com Customer Entitlement Claims. All FTX.com Customer Entitlement Claims whose holders have validly exercised the Opt-In Election prior to the Opt-In Deadline shall be administered, reconciled, valued, settled, adjudicated, resolved and satisfied in the DM Liquidation and disallowed in full in the Chapter 11 Cases. All other FTX.com Customer Entitlement Claims shall be administered, reconciled, valued, settled, adjudicated, resolved and satisfied in the Chapter 11 Cases and shall be disallowed in full in the DM Liquidation.

Section 5.03 Classification and Treatment in the DM Liquidation.

(a) Classification. Each Claim Admitted in the DM Liquidation shall be classified in accordance with this Agreement as either (i) a DM Non-Customer Claim, (ii) a DM Customer Entitlement Claim, (iii) a DM Excess Claim or (iv) a Claim for Administrative Expense.

(b) Treatment of DM Non-Customer Claims. Each holder of an Admitted DM Non-Customer Claim shall receive, in full and final satisfaction, settlement, release and discharge of and in exchange for its Admitted DM Non-Customer Claim, payment in cash according to the Laws governing the DM Liquidation in an amount equal to such holder's pro rata share of the DM Non-Customer Claims Pool; *provided* that any such holder shall not be entitled to receive a distribution in an amount greater than the total amount of its Admitted Claim. There shall be no other recovery for holders of DM Non-Customer Claims.

(c) DM Non-Customer Account. The DM Non-Customer Account shall receive no funding by FTX DM at any time other than funding upon the Final Settlement Effective Date in an amount equal to $15 million. The DM Non-Customer Account shall be the sole source of payment for DM Non-Customer Claims.

(d) Treatment of DM Customer Entitlement Claims.

(i) Subject to Section 5.03(d)(iv), each holder of an Admitted DM Customer Entitlement Claim shall receive, in full and final satisfaction, settlement, release and discharge of and in exchange for its Admitted DM Customer Entitlement Claim, distributions from FTX DM as set forth in this Section 5.03(d)(i). FTX DM shall make distributions on Eligible DM Customer Entitlement Claims and Ineligible DM Customer Entitlement Claims on the same distribution dates and on a ratable basis. Subject to there being sufficient DM Distributable Cash, the aggregate amount distributed, whether in cash or in kind, on all DM Customer Entitlement Claims (including both Eligible DM Customer Entitlement Claims and Ineligible Customer Entitlement Claims) on any distribution date shall equal the DM Customer Reference Amount for such distribution date.

(ii) Subject to Bahamas Court approval if necessary, FTX DM shall calculate the amount of a DM Customer Entitlement Claim to be equal to the fair market value of cash or Digital Assets on account at the FTX.com Exchange as of November 11, 2022; *provided* that Claims relating to the FTT token shall be valued at zero and treated as DM Excess Claims. FTX DM shall set the value of a Digital Asset at the U.S. Dollar

equivalent of the fair market value of such Digital Asset. FTX DM shall use commercially reasonable efforts to determine the fair market value of Digital Assets in a manner that is consistent with the valuation methodologies and processes adopted by the Debtors in consultation with FTX DM in the Chapter 11 Cases (as specified in the Plan Term Sheet).

(iii) The Debtors shall, at the request of FTX DM, take all commercially reasonable actions as may be reasonably appropriate or necessary to request that the Bankruptcy Court conduct one or more Joint Claims Hearings with the Bahamas Court.

(iv) FTX DM may request from time to time by notice to the Debtors that an otherwise Ineligible DM Customer Entitlement Claim be treated as an Eligible DM Customer Entitlement Claim in the event of bona fide discrepancies between mandatory allowance rules in the Chapter 11 Cases and the DM Liquidation. The Debtors shall consent to such request so long as such treatment does not increase the total amount of all Eligible DM Customer Entitlement Claims (taken together with all other requests pursuant to this Section 5.03(d)(iv)) by more than $75 million.

(v) In the event that the Debtors agree with the FTX.com Exchange Assets Buyer to offer holders of FTX.com Customer Entitlement Claims an opportunity to trade their claims or receive their distributions on a digital currency exchange operated by the FTX.com Exchange Assets Buyer, FTX DM shall, at the request of the Debtors and to the extent permitted under applicable Law, offer the same opportunity to holders of DM Customer Entitlement Claims on the same terms and conditions; *provided* that, notwithstanding anything to the contrary in this Agreement, to the extent that FTX DM is not permitted under applicable Law to offer such opportunity, all holders of FTX.com Customer Entitlement Claims that elect to trade their claims or receive their distributions on such digital currency exchange shall not be eligible to exercise the Opt-in Election.

(vi) To the extent permitted by applicable Law, FTX DM shall treat as DM Excess Claims any DM Customer Entitlement Claim held by a Bahamas Customer that has not Commenced KYC by the KYC Cut-off Date.

(e) Treatment of DM Excess Claims. No holder of a DM Excess Claim shall receive any distributions on account of its DM Excess Claim.

(f) Treatment of Administrative Expense Claims. Each holder of an agreed Administrative Expense Claim against FTX DM shall receive cash in an amount equal to the full unpaid amount of such Admitted Administrative Expense Claim.

Section 5.04 Claim Objections.

(a) The Parties shall use commercially reasonable efforts to consult and coordinate in connection with Claims objections in order to facilitate a consistent approach to the administration of the estates.

(b) FTX DM shall reject and, if applicable, contest any DM Excess Claim or any Claim held by an Excluded Party in consultation with the Debtors, and shall not settle such Claim or make any distribution to the holder of such Claim.

(c) FTX DM shall not Admit in the DM Liquidation any Ineligible DM Customer Entitlement Claim without reasonable advance notice to the Debtors and an adequate opportunity, if the Debtors so request, to be heard on the matter in the Bahamas Court.

Section 5.05 Settlement of Dotcom Customer Preference Actions.

(a) The Debtors shall offer certain Dotcom Customers the opportunity to settle avoidance actions relating to withdrawals off the FTX.com Exchange (each, a "Dotcom Customer Preference Action") consistent with the terms set forth in the Plan Term Sheet. The Debtors and FTX DM shall use commercially reasonable efforts to (i) make the same settlement offer to Dotcom Customers (the "Dotcom Customer Preference Offer") available in the Chapter 11 Cases in the DM Liquidation and (ii) to release the settled Recovery Actions belonging to the estates of the Debtors and FTX DM upon acceptance of the offer. FTX DM shall not make a Dotcom Customer Preference Offer (x) on terms more favorable than those offered in the Chapter 11 Plan or (y) in respect of any preference claim identified by the Debtors as an Excluded Preference Claim in accordance with the Plan Term Sheet.

(b) FTX DM shall not make any distribution on a DM Customer Entitlement Claim to a Dotcom Customer in respect of whom there is a Dotcom Customer Preference Action unless (i) the Dotcom Customer Preference Action has been settled on terms not more favorable to an eligible counterparty than as contemplated by the Dotcom Customer Preference Offer, (ii) the Debtors have consented or (iii) the distribution is required by Bahamas Law, in which case the applicable DM Customer Entitlement Claim (or such part of it as would have been subject to extinguishment or set-off by reason of a DM Customer Preference Action) shall be deemed an Ineligible DM Customer Claim.

(c) The Debtors shall manage the assertion, adjudication and settlement of a Dotcom Customer Preference Action to the extent such Dotcom Customer Preference Action is not a defense to a DM Customer Entitlement Claim, except to the extent Recovery Actions against the applicable defendant have been allocated to FTX DM pursuant to Section 2.02(a).

Section 5.06 Inter-Estate Funding.

(a) Debtor Funding Obligation.

(i) The Debtors agree to provide FTX DM with the Advance DM Loan as soon as reasonably practicable following the Initial Settlement Effective Date, but no later than January 29, 2024. The Debtors and FTX DM shall agree to the terms of the Advance DM Loan in advance of the time necessary for the Parties to seek approval or sanction, as applicable, of the Advance DM Loan in accordance with this Agreement. FTX DM shall apply the proceeds of the Allowed DM Loan solely to pay Administrative Expenses.

(ii) To the extent that, on any distribution date, the DM Customer Reference Amount exceeds DM Distributable Cash, the Debtors shall advance, from funds allocated to the Dotcom Customer Pool, cash to FTX DM to pay distributions to holders of DM Customer Entitlement Claims; *provided* that the Debtors shall have no obligation to advance funds to FTX DM to finance distributions by FTX DM unless (A) FTX DM is in compliance with this Agreement in all material respects and (B) the Debtors shall have received reasonable assurance that such funds will not be used, directly or indirectly, to pay DM Non-Customer Claims or DM Excess Claims.

(b) FTX DM Funding Obligation. To the extent that, on any distribution date, the DM Distributable Cash exceeds the DM Customer Reference Amount, FTX DM shall pay such excess to the Debtors for application pursuant to the Chapter 11 Plan, so long as the Debtors are in compliance with this Agreement in all material respects. In addition, to the extent that, on any distribution date or at any other time, the amount of DM Distributable Cash exceeds the amount necessary to pay all remaining DM Customer Entitlement Claims in accordance with this Agreement, FTX DM shall pay such excess to the Debtors for application pursuant to the Chapter 11 Plan.

(c) Administrative Expenses. To calculate the amounts due under Section 5.06(a) and Section 5.06(b) (as applicable), each Party shall take into account the actual and projected Administrative Expenses of the other estate; *provided* that each Party reserves the right to object to any Administrative Expenses incurred by the other Party's estate to the extent permitted under applicable Law before (i) the Bankruptcy Court, if for Administrative Expenses of the Debtors or (ii) the Bahamas Court, if for Administrative Expenses of FTX DM. Each Party may make additional advances to the other Party to pay Administrative Expenses as the other Party may agree from time to time.

Section 5.07 Distributions.

(a) The Debtors shall make distributions to holders of Trading Customer Entitlement Claims and other creditor Claims pursuant to the terms of the Acceptable Plan and in accordance with this Agreement. FTX DM shall make distributions to holders of DM Customer Entitlement Claims and other creditor Claims in the DM Liquidation in accordance with this Agreement. The Parties shall use commercially reasonable efforts to coordinate record dates and distributions, align procedures and policies, minimize confusion among Claims holders, and minimize administrative costs and expenses.

(b) This Agreement is premised on a centralized distribution process in which each Allowed or Admitted holder of an FTX.com Customer Entitlement Claim receives that same recovery as another similarly-situated holder. Therefore, the Chapter 11 Plan administrator or FTX DM may require any holder of a FTX.com Customer Entitlement Claim to submit satisfactory evidence that such holder has not requested or received compensation for the same losses underlying such claim in connection with the other estate's distributions, or any return of customer property procedures or other judicial or administrative proceeding (including any proceedings with respect to FTX Australia Pty Ltd., FTX Express Pty Ltd., FTX Turkey Teknoloji ve Ticaret Anonim Şirketi, FTX Europe AG, FTX EU Ltd., Quoine PTE Ltd. or FTX Japan K.K.), and may refrain from making distributions on such Claim until such time as

satisfactory evidence is obtained or appropriate arrangements are in place ensuring that no holder receives more than any other holder under the Plan after taking into account such other potential recoveries.

Section 5.08 Know-Your-Customer.

(a) FTX DM shall adopt in the DM Liquidation the same know-your-customer procedures utilized by the Debtors from time to time in the Chapter 11 Cases (the "KYC Procedures"), which shall be developed in consultation with the JOLs.

(b) Each Party agrees that it shall not (i) Allow or Admit any FTX.com Customer Entitlement Claim (including Eligible DM Customer Entitlement Claims and Ineligible DM Customer Entitlement Claims) unless the holder of such FTX.com Customer Entitlement Claim has Commenced KYC by the KYC Cut-off Date or (ii) pay any FTX.com Customer Entitlement Claim (including Eligible DM Customer Entitlement Claims and Ineligible DM Customer Entitlement Claims) unless and until the holder of such FTX.com Customer Entitlement Claim has satisfied the KYC Procedures in respect of itself and the Original Customer of such FTX.com Customer Entitlement Claim.

(c) Each Party agrees to share information with the other Party concerning the KYC Procedures and any supplementary know-your-customer process from time to time to the full extent permitted under applicable Law.

(d) In each of the Chapter 11 Cases and the DM Liquidation, except as required by applicable Law, no FTX.com Customer Entitlement Claim shall receive any distribution unless (i) the holder of such FTX.com Customer Entitlement Claims as of the KYC Cut-off Date shall have Commenced KYC by the KYC Cut-off Date and (ii) the holder of such FTX.com Customer Entitlement Claims as of the applicable distribution date shall have fully satisfied the then-applicable KYC Procedures.

Article VI. Representations and Warranties

The Debtors, and FTX DM severally, and not jointly, represent, warrant and covenant to the other Party that, as of the Execution Date:

(a) To the extent applicable, it is validly existing under the Laws of the state of its organization, and this Agreement, upon approval of the Bankruptcy Court or the Bahamas Court, as applicable, is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Law relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Bankruptcy Code, and the Bahamas Code, no consent or approval is required by any other Entity in order for it to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) to the extent applicable, the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material

respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association, or other constitutional documents; and

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the transactions contemplated by, and perform its respective obligations under, this Agreement.

Article VII. Stay and Resolution of Adversary Proceeding

Section 7.01 Stay of Adversary Proceeding. Between the Execution Date and the dismissal of the Adversary Proceeding pursuant to Section 7.03, the Debtors, FTX DM and the JOLs (the "Adversary Proceeding Parties") shall procure that the Adversary Proceeding be voluntarily stayed and all actions held in abeyance pending the Bankruptcy Court's consideration of confirmation of the Chapter 11 Plan; *provided* that such stay may be terminated by either Party upon termination of this Agreement.

Section 7.02 Resolution of Adversary Proceeding. In full and final settlement and satisfaction of the Adversary Proceeding, the Adversary Proceeding Parties agree to settle on the Final Settlement Effective Date (a) all Claims and Causes of Action between the Parties that are asserted or could have been asserted in the Adversary Proceeding and all pending litigation between the Parties on the terms set forth in this Agreement, (b) all intercompany Claims between the Parties, except as provided otherwise in this Agreement, and (c) any potential objection either Party may have to such settlement on such terms.

Section 7.03 Withdrawal with Prejudice. No later than seven (7) days after the Final Settlement Effective Date, the Adversary Proceeding Parties shall withdraw with prejudice the Claims and counterclaims asserted in the Adversary Proceeding and seek to dismiss with prejudice any and all pending litigation between the Parties.

Article VIII. Termination

Section 8.01 Mutual Termination Events. Either Party may terminate this Agreement upon prior written notice to the other Party in accordance with Section 10.12 upon the occurrence of any of the following events:

(a) the breach in any material respect by the other Party of any of the covenants set forth in this Agreement that would have, or could reasonably be expected to have, an adverse effect on the Global Settlement or the transactions contemplated by this Agreement, which breach remains uncured for thirty (30) Business Days after the terminating Party transmits a written notice in accordance with Section 10.12 detailing any such breach;

(b) any representation or warranty in this Agreement made by the other Party shall have been untrue in any material respect when made or shall have become untrue in any material respect, and that would have, or could reasonably be expected to have, an adverse effect on the Global Settlement or the transactions contemplated by this Agreement, which remains uncured for thirty (30) Business Days after the terminating Party provides written notice of the

untrue nature of the representation or warranty in accordance with Section 10.12 detailing any such untruthfulness;

(c) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Debtor seeking an order (without the prior written consent of FTX DM), (i) converting one or more of the Chapter 11 Cases of a Debtor to a case under chapter 7 of the Bankruptcy Code or (ii) terminating exclusivity under section 1121 of the Bankruptcy Code;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling, judgment or order that (i) enjoins the consummation of a material portion of the Global Settlement or the transactions contemplated by this Agreement and (ii) either (1) such ruling, judgment or order has been issued at the request of the non-terminating Party in contravention of any obligations set forth in this Agreement or (2) remains in effect for ten (10) Business Days after the terminating Party transmits a written notice in accordance with Section 10.12 hereof detailing any such issuance;

(e) the Initial Settlement Effective Date has not occurred by January 29, 2024;

(f) the Confirmation Order is reversed or vacated, and the Bankruptcy Court does not enter a revised Confirmation Order reasonably acceptable to the Parties within ten (10) Business Days;

(g) any of the Bahamas Approval Orders is reversed or vacated, and the Bahamas Court does not grant a revised Bahamas Approval Order or revised Bahamas Approval Orders (as the case may be) reasonably acceptable to the Parties within ten (10) Business Days;

(h) any of the Chapter 11 Approval Orders is reversed or vacated, and the Bankruptcy Court does not enter a revised Chapter 11 Approval Order or revised Chapter 11 Approval Orders (as the case may be) reasonably acceptable to the Parties within ten (10) Business Days;

(i) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling, judgment or order that an Acceptable DM Liquidation is stayed or enjoined; or

(j) the Final Settlement Effective Date has not occurred by September 1, 2024.

Section 8.02 Effect of Termination. Upon the occurrence of a Termination Date, other than as provided by Section 10.18, this Agreement shall be of no further force and effect and each Party shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or Causes of Action. Nothing in this Agreement shall be construed as prohibiting either Party from contesting whether any such termination is in accordance with the terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date.

Except as expressly provided in this Agreement, nothing in this Agreement is intended to, or does, in any manner waive, limit, impair, or restrict any right of any Party or the ability of any Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its Claims against the other Party. No purported termination of this Agreement shall be effective under this Section 8.02 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement. Notwithstanding the foregoing or anything herein to the contrary, no Party may exercise any of its termination rights as set forth in Section 8.01 if such Party has failed to perform or comply in all material respects with the terms and conditions of this Agreement unless such failure to perform or comply arises as a result of the other Party's actions or inactions or would not otherwise give rise to a termination event in favor of the other Party. Nothing herein, including termination of this Agreement, shall be construed as a release or waiver of any claims arising out of, resulting from or related to a breach of this Agreement by any Party.

Article IX. Releases

Section 9.01 Mutual Releases. Subject to the occurrence of, and effective upon and after, the Final Settlement Effective Date, the Debtors, on the one hand, and FTX DM, on the other hand, on behalf of themselves, and each and all of their and their respective present and future officers, directors, agents, executors, administrators, provisional liquidators, liquidators, conservators, predecessors, successors and assigns, excluding any Excluded Party (all such releasing persons and entities collectively, the "Releasing Parties"), hereby fully, unconditionally and irrevocably release, relieve, waive, relinquish, remise, acquit and forever discharge each other and their respective present and future officers, directors, agents, executors, administrators, provisional liquidators, liquidators, conservators, predecessors, successors and assigns, excluding any Excluded Party (all such released persons and entities collectively, the "Released Parties") from, against, and in respect of any and all present and future Claims, cross-claims, counterclaims, third-party claims, demands, liabilities, obligations, debts, liens, damages, losses, costs, expenses, controversies, actions, rights, suits, assessments, penalties, charges, indemnities, guaranties, promises, commitments, or causes of action of whatsoever nature, whether based in contract, tort or otherwise, whether in law or equity and whether direct or indirect, known or unknown, asserted or unasserted, foreseen or unforeseen, fixed or contingent, that such Party may have or may have against any other Party since the beginning of time, under, arising out of or in connection with the Global Settlement or any other Claims that could be asserted, including any right to claim indemnification or an award of attorneys' fees or other costs and expenses incurred in, or in connection with the Global Settlement, in all cases other than as otherwise provided in this Agreement.

Section 9.02 Exceptions to Mutual Releases. Notwithstanding any other provision of this Agreement, the Parties' respective releases do not affect their respective obligations under this Agreement, the Parties' respective rights to bring any Claims or other Causes of Action arising out of or in connection with a breach of this Agreement.

Section 9.03 Incorporation. FTX DM shall perform such acts as may be necessary to effectuate and give full force and effect of the releases set forth in this Article IX in The Bahamas. The Debtors shall incorporate the releases set forth in this Article IX in the Acceptable Plan.

Article X. Miscellaneous

Section 10.01 Acknowledgements. Notwithstanding any other provision of this Agreement, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

Section 10.02 Amendment and Waivers. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties.

Section 10.03 Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signature pages, and schedules attached to this Agreement is expressly incorporated into and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules attached to this Agreement) and the exhibits, annexes, and schedules attached to this Agreement, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

Section 10.04 Further Assurances. Subject to the other terms and conditions of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters specified in this Agreement, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court or the Bahamas Court, from time to time, to effectuate the Global Settlement, the releases set forth in Section 9.01 and any transaction contemplated by this Agreement, as applicable.

Section 10.05 Complete Agreement. Except as otherwise explicitly provided in this Agreement, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Existing Confidentiality Arrangement. The Parties acknowledge and agree that they are not relying on any representations or warranties other than as set forth in this Agreement.

Section 10.06 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 10.07 Dispute Resolution. Each Party agrees that it shall not initiate any action or proceeding in any court or tribunal in respect of any claim arising out of or related to this Agreement without reasonable advance notice and consultation with the other Party. Each Party to this Agreement agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement in accordance with the cross-border dispute resolution protocol attached as Exhibit D hereto.

Section 10.08 TRIAL BY JURY WAIVER. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN

ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

Section 10.09 Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each Person executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

Section 10.10 Rules of Construction. This Agreement is the product of negotiations among the Debtors and FTX DM, and in the enforcement or interpretation of this Agreement, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion of this Agreement, shall not be effective in regard to the interpretation of this Agreement. The Debtors and FTX DM were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

Section 10.11 Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable, inure for the benefit of the Released Parties in Section 9.01. Other than with respect to Section 9.01, there are no third-party beneficiaries under this Agreement, and, except as set forth in this Agreement, the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other Entity.

Section 10.12 Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to the Debtors, to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Andrew G. Dietderich, James, L. Bromley, Brian D. Glueckstein and Alexa J. Kranzley
E-mail address: dietdericha@sullcrom.com, bromleyj@sullcrom.com, gluecksteinb@sullcrom.com, and kranzleya@sullcrom.com

(b) if to FTX DM, to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: J. Christopher Shore, Brian Pfeiffer, Jason Zakia and Brett Bakemeyer

E-mail address: cshore@whitecase.com, bpfeiffer@whitecase.com, jason.zakia@whitecase.com, and brett.bakemeyer@whitecase.com

Lennox Paton
3 Bayside Executive Park
West Bay Street & Blake Road
N-4875
Nassau, The Bahamas
Attention: Sophia Rolle-Kapousouzoglou, Marco Turnquest
E-mail address: srolle@lennoxpaton.com; mturnquest@lennoxpaton.com

Any notice given by delivery, mail, or courier shall be effective when received.

Section 10.13 Admissibility. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating to this Agreement shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

Section 10.14 Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

Section 10.15 Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

Section 10.16 Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

Section 10.17 Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to, as applicable, the Debtors and FTX DM, submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

Section 10.18 Survival. Except as expressly provided herein, Section 10.05 (*Complete Agreement*), Section 10.06 (*Governing Law*), Section 10.07 (*Dispute Resolution*), Section 10.11 (*Successors and Assigns*), Section 10.12 (*Notices*), Section 10.13

(*Admissibility/FRE 408*), and Section 10.15 (*Severability and Construction*) shall survive any termination of this Agreement.

Section 10.19 Effectiveness. This Agreement shall become effective on the Initial Settlement Effective Date and shall be effective during the Agreement Effective Period.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Execution Date.

FTX TRADING LTD., FTX PROPERTY HOLDINGS LTD., WEST REALM SHIRES INC., ALAMEDA RESEARCH LLC, and CLIFTON BAY INVESTMENTS, for themselves and on behalf of their affiliated debtors and debtors-in-possession

By _____
Name: John J. Ray III
Title: Chief Executive Officer

FTX Digital Markets Ltd. – In Liquidation

By _____
Name: Brian Simms, KC
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____
Name: Kevin Cambridge
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

By _____
Name: Peter Greaves
Title: Joint Official Liquidator of FTX Digital Markets Ltd., acting as agent and without personal liability

Exhibit A

DOJ Seized Accounts

Bank	Last 4 Digits of Account Number
Farmington State Bank d/b/a Moonstone Bank	2685
Farmington State Bank d/b/a Moonstone Bank	2825
Silvergate Bank	2549
Silvergate Bank	2556
Silvergate Bank	2564
Silvergate Bank	0036
Silvergate Bank	0037

Exhibit B

List of Specified Jurisdictions

1. Antigua and Barbuda
2. The Bahamas
3. Barbados
4. BVI
5. Cayman Islands
6. Dominica
7. Gibraltar
8. Hong Kong
9. Jamaica
10. Saint Lucia
11. St. Kitts and Nevis
12. St. Vincent and the Grenadines
13. Trinidad and Tobago
14. United Kingdom
15. Isle of Man
16. Anguilla
17. Bermuda
18. Turks and Caicos Islands
19. Jersey
20. Guernsey
21. Aruba
22. Cuba
23. Dominican Republic
24. Haiti
25. Martinique

Exhibit C

Stipulated DM Property – Allocation Upon Final Settlement Effective Date

1. An amount in cash to be transferred by the Debtors to FTX DM equal to $78 million *minus*, in accordance with the terms of the Advance DM Loan, the amount equal to the outstanding principal amount of the Advance DM Loan and accrued interest thereon as of the Settlement Effective Date

2. Any and all DOJ Seized Funds that may be released by the DOJ

3. All proceeds from the Stipulated PropCo Claim

4. All cash currently held by FTX DM

5. All licenses and registrations held by FTX DM under the Digital Assets and Registered Exchanges Act enacted by the Parliament of The Bahamas

6. All DM-Controlled Recovery Actions and all the proceeds thereof

7. FTX DM's other Claims and Causes of Action against third parties arising out of non-Dotcom Customer relationships, other than any action against any Excluded Party

8. All of FTX DM's rights under this Agreement, including the right to receive payments from the Debtors thereunder

9. The real property commonly known as "Blue Water", Lot A, Old Fort Bay, Nassau, New Providence, The Bahamas.

10. All the proceeds of Claims against Sam Bankman-Fried, Gary Wang, Nishad Singh or any other Person agreed between the Parties by agreement between counsel to each Party conveyed in writing (including electronic mail) between such counsel that are related to the real properties located in The Bahamas that were purchased in such individual's name; *provided* that such Claims shall constitute Debtor-Controlled Recovery Actions.

11. All Claims against any Person agreed between the Parties by agreement between counsel to each Party conveyed in writing (including electronic mail) between such counsel.

12. Other miscellaneous assets that are not real estate assets that are physically located in The Bahamas and not in the name of a Debtor (or which the Debtors provide prior written consent to the transfer to FTX DM), except that the Digital Assets held by the SCB shall constitute Stipulated Debtors Property.

13. All proceeds from the Fenwick Retainer Receivable.

14. All proceeds from accounts or assets (other than Digital Assets) in the name of FTX DM.

Exhibit D
Dispute Resolution Protocol

1. Definitions. Capitalized terms used but not defined herein have the meaning set forth in the Global Settlement Agreement, dated as of December 19, 2023 (the "GSA"), by and among the Debtors and FTX DM acting by the JOLs as agents and without personal liability. The following terms shall have the following definitions:

"Covered Agreement" means the GSA, the Properties Exclusive Sales Agency Agreement, the Advance DM Loan, and any other agreements, consents, certificates, amendments, assignments, or instruments in connection therewith or that otherwise expressly incorporate the terms of this Protocol (as defined below).

"JIN Guidelines" mean the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network in October 2016 as reflected in Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 9029-2.

"Plan Administrator" means, (a) if prior to the Plan Effective Date, the Debtors' Chief Executive Officer and (b) if on or after the Plan Effective Date, the plan administrator appointed pursuant to the terms of the Chapter 11 Plan.

2. Exclusive Mechanism. The Parties shall resolve any dispute, controversy, issue, claim, breach, enforcement or disputed termination arising out of or relating to any Covered Agreement (each, a "Dispute") pursuant to the terms of this Dispute Resolution Protocol (the "Protocol"). The procedures set forth in this Protocol shall be the exclusive mechanism for resolving any Dispute that may arise from time to time between the Parties and no Party may initiate any action or proceeding in any court in respect of any Dispute without complying with this Protocol.

3. Negotiation and Consultation without Judicial Intervention. Either Party may give written notice to the other Party of the existence of a Dispute ("Dispute Notice"). Promptly following the delivery of a Dispute Notice, the Parties shall attempt in good faith to resolve any Dispute set forth in the Dispute Notice without judicial intervention by negotiation and consultation between themselves, including not fewer than one in person or virtual meeting between the Plan Administrator on behalf of the Debtors and the JOLs on behalf of FTX DM.

4. Concurrent Jurisdiction Procedure. In the event that such Dispute is not resolved by the Parties within twenty (20) days after the delivery of a Dispute Notice, either Party may give written notice to the other Party of its intent to seek judicial intervention to resolve the Dispute ("Judicial Intervention Notice"). Following the delivery of a Judicial Intervention Notice, the Parties shall negotiate in good faith a procedure to resolve the Dispute that involves the concurrent jurisdiction of the Bankruptcy Court and the Bahamas Court and is consistent with the JIN Guidelines and applicable Law ("Concurrent Jurisdiction Procedure").

5. Failure to Reach Agreement on Concurrent Jurisdiction Procedure. In the event that the Parties do not reach an agreement with respect to the terms of a Concurrent Jurisdiction Procedure within twenty (20) days after the delivery of a Judicial Intervention Notice, either Party may bring any action or proceeding in respect of any Dispute in the Bankruptcy Court or the Bahamas Court.

6. Interim Measures. Each Party shall take such actions as may be reasonably necessary to preserve the *status quo* with respect to the subject matter of any *bona fide* Dispute pending resolution and either Party may make an application to any court of competent jurisdiction seeking interim measures reasonably necessary to obtain court approval of such actions from time to time. Any Party that seeks interim measures pursuant to this section shall give prompt written notice to the other Party attaching copies of the application seeking interim measures and any supporting documents filed with the applicable court.

7. Notices. All notices given pursuant to this Protocol shall comply with Section 10.12 of the GSA.

Exhibit C

Greaves Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 15
FTX DIGITAL MARKETS LTD.,[1]	)	Case No. 22-11217 (JTD)
Debtor in a Foreign Proceeding.	)	

DECLARATION OF PETER GREAVES IN SUPPORT OF THE MOTION OF THE FOREIGN REPRESENTATIVES PURSUANT TO BANKRUPTCY RULE 9019 FOR ENTRY OF AN ORDER (I) APPROVING THE SETTLEMENT AND (II) GRANTING RELATED RELIEF

I, Peter Greaves, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner in the Restructuring and Insolvency practice of PwC, based in Hong Kong. I am PwC's restructuring and insolvency leader for the Asia Pacific region. I am a licensed UK Insolvency Practitioner acting in liquidations, receiverships, administrations and schemes of arrangements. I have more than thirty years of corporate restructuring and insolvency experience across a range of industries and jurisdictions.

2. Kevin G. Cambridge, Brian C. Simms KC, and I are the joint official liquidators (the "**JOLs**") of FTX Digital Markets Ltd. ("**FTX DM**"), in official liquidation in the Supreme Court of the Commonwealth of The Bahamas (the "**Bahamian Official Liquidation**") pursuant to the Companies (Winding Up Amendment) Act, 2011 (the "**CWUA Act**") in the Supreme Court of The Bahamas (the "**Bahamas Court**"). The JOLs also serve as the recognized foreign representatives (the "**Foreign Representatives**") in FTX DM's ancillary chapter 15 case. FTX DM, formed on July 22, 2021, is an International Business Company incorporated in the

[1] FTX Digital Markets Ltd. (in Official Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

Commonwealth of The Bahamas and operated as a digital assets business under the Digital Assets and Registered Exchanges Act of 2020 (the "**DARE Act**").

3. I submit this declaration (the "**Declaration**") in support of the *Motion of the Foreign Representatives Pursuant to Bankruptcy Rule 9019 For Entry of an Order (I) Approving the Settlement and (II) Granting Related Relief* (the "**Motion**")[2].

4. Except as otherwise indicated, the statements made in this Declaration are based on the knowledge I have obtained in the course of carrying out my duties as JOL (including the period of FTX DM's Provisional Liquidation prior to the commencement of its Official Liquidation) and the work of professionals retained by the JOLs and working under my supervision.

5. I am over the age of 18 and authorized to submit this Declaration on behalf of the JOLs in the above-captioned Chapter 15 Case. If called as a witness, I would testify truthfully to the matters stated in this Declaration.

6. For well over a year, FTX DM and the Debtors have been sparring over complex cross-border legal issues, including the Parties' respective legal rights regarding more than $9 billion of claims and cross claims for international and domestic assets. As directed by the Court, FTX DM and the Debtors engaged in good faith, arm's-length negotiations over a period of many months regarding the terms of a global settlement to resolve all of their disputes and ensure mutual support for their respective insolvency proceedings.

7. After many months of difficult and complicated negotiations, FTX DM and the Debtors' efforts have concluded in a global and mutually beneficial settlement of all of their material disputes through the GSA (the "**Settlement**"). The Settlement encompasses the GSA, as

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

well as the ancillary Loan Agreement and Exclusive Sales Agency Agreement between the Parties.[3]

8. The Settlement contains two key components. *First*, it establishes a procedure under which customers of the FTX.com exchange may elect to have their claims adjudicated and paid in either the Bahamian Official Liquidation or the Chapter 11 Cases. This election will allow the customers of the FTX.com exchange to choose their preferred forum. Regardless of their election, all FTX.com customers with valid claims will receive, at similar times, substantially similar distributions.

9. *Second*, the Settlement includes procedures with respect to the monetization and distribution of the assets of the FTX Group. FTX DM, acting by its Foreign Representatives, will take the operational lead in the realization of real estate and other assets in The Bahamas to maximize recoveries for customers and creditors, together with the pursuit of specific litigation claims and avoidance actions identified in the GSA. The Debtors will take the operational lead with respect to all other recovery activities available to both estates. In each case, the Parties will cooperate, share information, and effectively utilize the assistance of their respective courts.

10. The following is a summary of certain pertinent terms of the Settlement:

Staggered Effectiveness **Sections 1.01 and 10.19**	The approval by this Court and sanction by the Bahamas Court of the GSA and ancillary documents are conditions precedent to *initial effectiveness* of the Settlement. The GSA will not reach *final effectiveness* unless and until a plan of reorganization (that is consistent with the GSA) is confirmed by this Court and becomes effective.
Terms Effective Upon *Initial* Settlement Effective Date	
Support	In the Bahamian Official Liquidation, the Debtors will not object to, or take any action contrary to any liquidation of FTX DM proposed by the

[3] The Loan Agreement and Exclusive Sales Agency Agreement are also subject to the approval of the Bahamas Court.

Sections 3.02, 4.02	Foreign Representatives that is consistent with the terms of the GSA. In the Chapter 11 Cases, FTX DM and the Foreign Representatives will support any plan of reorganization proposed by the Debtors that is consistent with the terms of the GSA.
Opt-In **Sections 5.02(a) and5.07**	All customers of FTX.com (other than insiders and certain excluded customers against whom the Debtors have pending or potential claims) will have the opportunity to elect whether to have their claims reconciled and paid in the Bahamian Official Liquidation or in the Chapter 11 Cases, under the elective procedures, which the Parties will finalize and propose to the Courts for prior approval. FTX DM and the Debtors currently anticipate that eligible FTX.com customers will be able to make this election either in a claim form filed in the Bahamian Official Liquidation or in response to Chapter 11 plan ballots distributed by the Debtors.
KYC Procedures **Section 5.08**	Know-Your-Customer Procedures will be implemented in a coordinated manner designed to ensure compliance with applicable law in the United States, The Bahamas, and all other applicable jurisdictions. FTX DM will adopt the same Know-Your-Customer Procedures implemented by the Debtors in the Chapter 11 cases.
Settlement of Preference Actions **Section 5.05**	The Debtors and FTX DM will use commercially reasonable efforts to (i) make the same settlement offer to Dotcom Customers available in the Chapter 11 Cases and, the DM Liquidation and (ii) release the settled Recovery Actions belonging to the estates of the Debtors and FTX DM upon acceptance of the offer.
Loan Agreement **Section 5.06(a)**	Subject to the approval of this Court and the Bahamas Court, pursuant to the terms of the Loan Agreement, the Debtors will provide FTX DM an interest-bearing loan of $45 million exclusively to pay Administrative Expenses. Certain extraordinary events trigger a mandatory prepayment of the loan. The principal on the loan matures on the earlier of: 18 months; the chapter 11 Plan Effective Date; termination of the GSA; or when the principal automatically becomes due pursuant to the terms of the Loan Agreement.
Third-Party Litigation **Section 2.02**	The Parties have agreed to a consensual approach with respect to litigation against unaffiliated third parties through Recovery Actions. The right to manage and control the prosecution of Recovery Actions has been amicably divided between the Parties. The Parties will cooperate and use commercially reasonable efforts to maximize recoveries from all Recovery Actions.
Bahamas Real Property	Each Party agrees to joint processes set forth in the Exclusive Sales Agency Agreement for the prompt cash sale of real estate owned by FTX Property Holdings Ltd. ("**PropCo**") in The Bahamas. FTX DM, acting

Section 2.04	by its Foreign Representatives will take the operational lead in marketing and selling the real estate owned by PropCo.
Valuation **Section 5.03**	FTX DM will use commercially reasonable efforts to determine the fair market value of digital assets in a manner that is consistent with the valuation methodologies and processes adopted by the Debtors in consultation with FTX DM in the Chapter 11 Cases in order to minimize potential discrepancies in the administration of their respective proceedings. The valuation of digital assets as of the Petition Date will reflect a consensual approach between the Debtors and FTX DM, approved by both Courts.
Terms Effective Upon *Final* Settlement Effective Date (Chapter 11 Plan Effectiveness)	
Distributions **Section 5.07(b)**	Upon effectiveness of the Debtors' plan of reorganization, for the purposes of making distributions to FTX.com customers, the Debtors and FTX DM will pool assets, and coordinate the establishment of reserves and the timing and amount of distributions, to ensure that FTX.com customers in both proceedings receive substantially identical relative distributions at substantially identical times.
Disputed Property **Section 2.01,** **Exhibit C**	The Parties will consensually allocate disputed property between the Debtors and FTX DM, to be vested free and clear of all claims and interests of the other on the Final Settlement Effective Date.
Inter-Estate Funding **Section 5.06**	On any distribution date, the Debtors will determine the distributable amount (reserving for appropriate holdback amounts) for customers of the FTX.com exchange as a cumulative percentage. To the extent that one estate does not have sufficient assets to fulfil the distributable amount, the other estate will pay cash sufficient to pay the full distributable amount owed to customers.
PropCo Chapter 11 Plan **Section 2.04**	PropCo will be treated separately under the Chapter 11 Plan and not be substantively consolidated with any other Debtor. FTX DM will have a claim against PropCo, stipulated and Allowed as an unsecured, unsubordinated, prepetition Claim in the amount of $256,291,221.47; provided that the Stipulated PropCo Claim will be subordinated to the PropCo Ordinary Course Claims.
Releases **Section 9**	The Parties will fully release each other from, against, and in respect of any and all present and future Claims connected to the Settlement (other than the Stipulated PropCo Claim).

Stay of Adversary Proceeding **Sections 7.01, 7.02**	In full and final settlement and satisfaction of the Adversary Proceeding, the Adversary Proceeding Parties (as defined by the GSA) agree to settle upon effectiveness of the Debtors' plan of reorganization (a) all Claims and Causes of Action between the Parties that are asserted or could have been asserted in the Adversary Proceeding and all pending litigation between the Parties on the terms set forth in the GSA, (b) all intercompany Claims between the Parties, except as provided otherwise in the GSA, and (c) any potential objection either Party may have to such settlement on such terms.

11. The Settlement resolves the disputes between the Debtors and FTX DM (and its Foreign Representatives), which raised many novel and complex legal issues in the largest digital asset cross-border insolvency to date. The Settlement provides a landmark breakthrough in both the Chapter 11 Cases and Bahamian Official Liquidation, allowing for collaboration in the maximization of the value of the FTX Group's assets and the efficient adjudication of customer claims, with a collaborative approach that provides a roadmap to accelerate distributions to creditors. Thus, the Settlement confers substantial benefits upon FTX DM and its estates while avoiding the risks and uncertainties of adjudicating the merits of FTX DM's claims against the Debtors, in both this Court and the Bahamas Court. Importantly, the Settlement avoids the costs of potentially litigating the claims twice (and potentially in two different fora).

12. Based on the facts and my understanding of the claims and disputes between the estates of FTX DM and the Debtors as presented to me by FTX DM's advisors, I concluded that significant time, money, and other resources, would be necessary to litigate FTX DM's claims against the Debtors, particularly with respect to the Adversary Proceeding. This, coupled with the risks and uncertainties related to prosecuting all of FTX DM's claims, makes entry into the Settlement in FTX DM's estate and creditors' best interests.

13. It is my view that the terms of the Settlement are fair and reasonable and should be approved. The Settlement provides for a mutually beneficial solution to the complex cross-border

legal issues raised by the circumstances of the collapse of the FTX Group, in a way that ensures customers in both proceedings receive, at similar times, substantially similar distributions on their claims. The Settlement also provides for a resolution of the Adversary Proceeding and all other existing issues and will enable FTX DM and the Debtors to proceed with their respective insolvency proceedings and focus on prompt distributions to creditors. Without the Settlement, liquidation of FTX DM's estate would be halted, and creditors could wait for years in order to even submit their proofs of debt, much less receive distributions, in the Bahamian Official Liquidation.

14. It is also my view that consummation of the Settlement represents a sound exercise of FTX DM's business judgment and is well above the lowest range of reasonableness.

[*Remainder of Page Intentionally Left Blank*]

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, information and belief.

Dated: January 4, 2024

/s/ Peter Greaves

Peter Greaves
Joint Official Liquidator of FTX Digital Markets Ltd. (acting as agent without personal liability)

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

SUMMONS

LET ALL PARTIES concerned attend before **His Lordship the Honourable Chief Justice Sir Ian Winder Chief Justice** of the Supreme Court of the Commonwealth of The Bahamas, in Chambers at the Supreme Court of The Bahamas, Annex 1, Nassau, The Bahamas on _____ the _____ day of _____A.D., **2023** at _____o'clock in the _____-noon or as soon thereafter as Counsel can be heard on an application on behalf of the Joint Provisional Liquidators (the "**JPLs**") of FTX Digital Markets Ltd ("**FTX DM**") pursuant to *the* ***Companies (Winding Up Amendment) Act 2011, section 199(4)*** and ***the Companies Liquidation Rules 2012, O.4, r.5(2)***, *and* ***Supreme Court Act, section 15*** and/or under the inherent jurisdiction of the Court for binding directions and declarations as to the following matters:

1. How the amendment of the applicable FTX Terms of Service (the "**ToS**") dated 28 February 2022 (the "**Feb ToS**") was effected (if it was) into the form of the ToS dated

13 May 2022 (the "**May ToS**"), and if so from what date did such amendment take effect?

2. What is the applicable governing law by which the questions set out at paragraph 1 fall to be determined?

3. Whether, in the events that have happened, on a proper construction of the applicable FTX ToS, and applying the applicable governing law:

a. Users of the FTX International Platform were migrated to FTX DM as from the effective date of the May ToS for each such User (or any other date, and if so which);

b. those Services listed in Schedules 2, 3, 4, 5 6 and 7 to the May ToS (the "**Schedules**") were from that effective date (or any other date, and if so which) provided by FTX DM under the May ToS;

c. the rights and/or obligations in respect of the Account(s) for each User (each as defined in the relevant ToS) were from that effective date (or any other date, and if so which) rights and/or obligations of FTX DM under the May ToS (in whole or in part, and if in part, in what part);

d. digital assets and/or fiat transferred by Users to the FTX International Platform were from that effective date (or any other date, and if so which) assets and/or fiat of FTX DM in law (whether transferred before or after that date); and

e. digital assets and/or fiat presently held, or as may be held in the future, in the name of FTX DM are assets and/or fiat of FTX DM in law?

4. In what capacity does FTX DM hold any digital assets and/or fiat ("asset"). In particular:

a. what is applicable governing law ;

b. does FTX DM hold such assets for its own account or on trust;

c. if FTX DM holds any such assets on trust:

i. what assets are subject to the trust;

ii. how much flexibility does FTX DM as trustee have, for example:

1. is there a requirement to segregate that asset;

2. is there a right to use that asset for any purpose;

iii. is the trust over a fluctuating pool of assets for the benefit of all Users of FTX DM as co-owners as well as FTX DM itself to the extent that any of its assets are within such pool;

iv. does each User have the right to trace their property into specific assets held on trust; and

v. what rights do Users have against FTX DM in respect of shortfalls in the assets held on trust; and

d. can cryptocurrency and/or fiat be held by FTX DM as bailee?

5. Whether the counterparty in respect of perpetual future contracts who transacted on the FTX International Platform on or after 13 May 2022 was FTX DM, a User or someone else (and if so who)?

6. For the purposes of determining the questions set out at paragraphs 1 to 5, a direction pursuant to **CPR Part 21.4**, that one or more persons who have an interest in the determination of the questions in this Summons be appointed for the purposes of making representations to the Court.

7. An order that the costs of and occasioned by this Summons be provided for.

DATED this **[x]** day of **March** A.D., **2023**

REGISTRAR

This Summons was taken out by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

SUMMONS

2022
COM/com/00060

LENNOX PATON
Chambers
No. 3 Bayside Executive Park
Blake Road and West Bay Street
Nassau, New Providence
The Bahamas
Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.

(A Registered Digital Asset Business)

FIFTH AFFIDAVIT OF BRIAN C. SIMMS KC

I, BRIAN SIMMS KC, of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas make Oath and Say as follows:

Introduction

1. Kevin G. Cambridge, Peter Greaves, and I are the duly appointed joint provisional liquidators ("**JPLs**" or "**Joint Provisional Liquidators**") of FTX Digital Markets Ltd. ("**FTX DM**"), a company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (as amended) (the "**DARE Act**").

2. I make this affidavit in support of the JPLs' application for directions pursuant to the Companies Liquidation Rules, 2019, O.4, r.5(2) in relation to a number of issues that have arisen concerning the rights and obligations of FTX DM as explained in more detail below.

3. The facts and matters referred to herein are, unless otherwise stated, within my own knowledge or are obtained from documents in my possession or the legal team at Lennox Paton or investigations carried out by, or on behalf of, the JPLs in relation to the affairs of FTX DM and are true to the best of my knowledge, information and belief. Those investigations are on-going. Nothing in this affidavit is intended to, or does, waive any legal professional or other privilege of FTX DM.

4. There is now produced and shown to me marked **"BCS-1"** a paginated bundle of documents to which I shall refer in the course of my affidavit. References to page numbers in this affidavit are references to page numbers in the said paginated bundle unless otherwise stated. The directions sought by the JPLs concern (i) the parameters of the FTX DM estate; (ii) the rights and obligations of the JPLs in relation to the FTX DM estate; (iii) who the users/customers of FTX DM are; (iv) the nature of the rights and obligations of the users/customers of FTX DM, including in particular are the FTX DM customer creditors of FTX DM or beneficiaries of assets held on any trust by FTX DM; and (v) the relationship of the users/customers of FTX DM to each other and/or other creditors or stakeholders of FTX DM.

5. The directions sought by the JPLs are central to the provisional liquidation of FTX DM. In the absence of directions from this Honourable Court the provisional liquidation cannot be satisfactorily progressed as required by the orders made by this Honourable Court.

6. The JPLs acknowledge that one or more of the issues raised by this Summons may touch on issues arising in the estates of the Chapter 11 Debtors and that they may seek the determination of those issues in the Delaware Bankruptcy Court. Should a conflict arise between directions given to the JPLs by this Honourable Court in relation to the FTX DM estate and any determination by the Delaware Bankruptcy Court in relation to the Chapter 11 Debtor estates, it may be necessary in due course for judicial communications to take place between this Honourable Court and the Delaware Bankruptcy Court pursuant to the Judicial Insolvency Network or other guidelines in order to resolve any conflict.

7. At this stage, however, the JPLs seek directions in relation to the further conduct of the provisional liquidation of FTX DM and on matters which are overwhelmingly likely to be governed by English law, the laws of The Bahamas or possibly the laws of Antigua and

Barbuda. The issues are complex and might well be subject to appeal from this Honourable Court to, eventually, the Privy Council. The Privy Council is the final court of appeal from the Courts of The Bahamas and Antigua and Barbuda. Rulings of the Privy Council on English law are also, in effect, final, because the justices of the Privy Council also sit as justices of the Supreme Court of England, Wales and Northern Ireland and, therefore, are highly unlikely to reach different conclusions on the same issues. The JPLs desire that the issues raised by this Summons are determined by this Honourable Court, being the Court with the conduct of the provisional liquidation of FTX DM and the Court from which, if necessary, an appeal will ultimately lie to the Privy Council with final authority to determine these issues.

8. The JPLs have had several conversations with Counsel for the Securities Commission of The Bahamas (the "**SCB**") in relation to when the JPLs would make an application to determine the ownership of the digital assets currently held by the SCB. The SCB has been concerned about the administrative costs of holding the digital assets and wishes to have the ownership issue resolved.

9. The Supplemental Order of the Court filed on 21 November 2022 in a separate Action brought by the SCB (Supreme Court Action No. Com/com/ of 2022) provided that the SCB shall be regarded as acting as trustee in the administration of trust assets within the meaning of the Trustee Act, for the benefit of the clients and/or creditors of FTX DM, pending directions for the continued safe custody of the said assets issued by this Honourable Court to the JPLs and/or the Commission in the proceeding for the winding-up of FTX DM or further order.

10. The JPLs consider that in the event an application by the SCB was made it would be likely to cover a narrower range of issues than the Summons, leading to a fragmentation of issues and possible duplication. Accordingly, another reason for the issue of this Summons now is to address issues of concern to the SCB which the SCB desire to be resolved.

Background

11. FTX DM is a company within the meaning of the Companies (Winding Up Amendment) Act, 2011 and is in provisional liquidation in the Commonwealth of The Bahamas pursuant to a petition for the winding up of FTX DM presented on 10 November 2022 by

SCB which was accompanied by an application to appoint a provisional liquidator. On 10 November 2022 the Honourable Mr. Chief Justice Winder of the Supreme Court of the Commonwealth of The Bahamas made an order appointing me as a provisional liquidator of FTX DM. On 14 November 2022, on my application the Honourable Mr. Chief Justice Winder appointed Mr. Kevin G. Cambridge and Mr. Peter Greaves as additional provisional liquidators. The orders of appointment are at **BCS-1**, pages **[1] to [8]**).

12. At the time of appointment of the JPLs, FTX DM was registered to provide, and was providing, services on an on-line "*cryptocurrency derivatives exchange*" platform, (the "**FTX International Platform**"). FTX DM has been registered to provide such services since 10 September 2021.

13. On 11 and 14 November 2022, companies (other than FTX DM) in the FTX group (the "**Chapter 11 Debtors**"), filed in the United States Bankruptcy Court for the District of Delaware (the "**Delaware Bankruptcy Court**") voluntary petitions (the "**Chapter 11 Cases**") for relief under title 11 of the United States Code 11 U.S.C. §§101 *et seq* (the "**US Bankruptcy Code**"). The names of the Chapter 11 Debtors are contained in Annex A at pages **[9]-[11]** of Exhibit **BCS-1** and a group structure chart of the FTX group prepared by the US Debtors (not the JPLs) is at page **[12]** of Exhibit **BCS-1.**

The Summons for Directions

14. There are a number of issues pertaining to the rights of FTX DM, including in respect of its customers (the "**customers**", "**Customers**", or "**Users**"), which give rise to issues of fact and law in respect of which the JPLs respectfully seek this Court's guidance.

15. The directions sought are as follows:

(1) How the amendment of the applicable FTX Terms of Service (the "**ToS**") dated 28 February 2022 (the "**Feb ToS**") was effected (if it was) into the form of the ToS dated 13 May 2022 (the "**May ToS**"), and if so from what date did such amendment take effect?

(2) What is the applicable governing law by which the questions set out at paragraph (1) fall to be determined?

(3) Whether, in the events that have happened, on a proper construction of the applicable FTX ToS, and applying the applicable governing law:

(a) Users of the FTX International Platform were migrated to FTX DM as from the effective date of the May ToS for each such User (or any other date, and if so which);

(b) those Services listed in Schedules 2, 3, 4, 5 6 and 7 to the May ToS (the "Schedules") were from that effective date (or any other date, and if so which) provided by FTX DM under the May ToS;

(c) the rights and/or obligations in respect of the Account(s) for each User (each as defined in the relevant ToS) were from that effective date (or any other date, and if so which) rights and/or obligations of FTX DM under the May ToS (in whole or in part, and if in part, in what part);

(d) digital assets and/or fiat transferred by Users to the FTX International Platform were from that effective date (or any other date, and if so which) assets and/or fiat of FTX DM in law (whether transferred before or after that date); and

(e) digital assets and/or fiat presently held, or as may be held in the future, in the name of FTX DM are assets and/or fiat of FTX DM in law?

(4) In what capacity does FTX DM hold any digital assets and/or fiat ("asset"). In particular:

(a) what is applicable governing law ;

(b) does FTX DM hold such assets for its own account or on trust;

(c) if FTX DM holds any such assets on trust:

(i) what assets are subject to the trust;

(ii) how much flexibility does FTX DM as trustee have, for example:

(A) is there a requirement to segregate that asset;

(B) is there a right to use that asset for any purpose;

(iii) is the trust over a fluctuating pool of assets for the benefit of all Users of FTX DM as co-owners as well as FTX DM itself to the extent that any of its assets are within such pool;

(iv) does each User have the right to trace their property into specific assets held on trust; and

(v) what rights do Users have against FTX DM in respect of shortfalls in the assets held on trust; and

(d) can cryptocurrency and/or fiat be held by FTX DM as bailee?

(5) Whether the counterparty in respect of perpetual future contracts who transacted on the FTX International Platform on or after 13 May 2022 was FTX DM, a User or someone else (and if so who)?

(6) For the purposes of determining the questions set out at paragraphs (1) to (5), a direction pursuant to CPR Part 21.4, that one or more persons who have an interest in the determination of the questions in this Summons be appointed for the purposes of making representations to the Court.

16. This affidavit is divided into the following sections:

(1) Brief overview of digital assets

(2) The history of FTX.com

(3) Transfer of fiat to (or from) the FTX International Platform (before migration)

(4) Transfer of digital assets to (or from) the FTX International Platform

(5) FTX private keys

(6) Transactions in digital assets on the FTX International Platform

(7) Migration to The Bahamas (including incorporation of FTX DM and its registration under the Digital Assets and Registered Exchanges Act, 2020 ("**DARE Act**")

(8) FTX customer KYC update

(9) Company bank accounts used for the FTX International Platform

(10) Amendments to the Feb ToS

(11) Role of FTX DM in relation to the Specified Services

(12) Obligor in respect of Users' Accounts

(13) Owner of assets (digital assets and fiat/account debts)

(14) Rights of owner to use such assets

(15) Nature of the rights of Users

(16) Appointment of representative parties.

17. Certain of the matters summarised above are dependent upon legal analysis. This affidavit does not seek to set out the detail of that legal analysis, but indicates the broad outlines of it, which will be expanded upon in due course.

18. At this time the JPLs have access to limited information but we envisage obtaining more information in relation to FTX DM held on Amazon Web Services ("**AWS**") and Google Workspace servers, currently in the control of the Chapter 11 Debtors or one or more of them. While the Chapter 11 Debtors have recently shared substantial data pursuant to the Cooperation Agreement entered into by the JPLs and the Chapter 11 Debtors dated 6 January 2023 and approved by this Court on 10 February 2023, such data is still being evaluated. This process may take another month. Unfortunately, the Chapter 11 Debtors have not yet made available any of FTX DM's emails or slack messages to which the JPLs believe they are entitled. Pending receipt and consideration of further information from the Chapter 11 Debtors, this affidavit sets out the factual position to the best of the JPLs' present understanding. Upon receipt and review of the further information that the JPLs

expect the Chapter 11 Debtors will make available to them, the JPLs anticipate further evidence being filed in relation to the matters which are the subject of this affidavit.

(1) Brief overview of digital assets

19. Digital assets are increasingly important in modern society. They are used for an expanding variety of purposes — including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or rights — and in growing volumes, *See* pages [x]-[x] of Exhibit **"BCS-1"**.

20. Perhaps the most well-known digital asset is Bitcoin. Although often spoken about as if it were a "coin", it is at base just a ledger entry – a ledger entry on a public electronic ledger maintained on a decentralised basis by a self-defining group of computers which co-ordinate with one another through the application of particular software code. That code aims to ensure that in practice there is only one accurate copy of the ledger, which is achieved through cryptography and the application of "game theory". The ledger is made up of blocks of data comprising transactions in Bitcoin, and when new transactions occur they are gathered together in a new block of data which then supersedes the previous one in the chain, with one block in the Bitcoin blockchain being added approximately every 10 minutes. The ledger of Bitcoin transactions is therefore commonly called a "blockchain", and transactions in Bitcoin reflected in that ledger are commonly called "on-chain" transactions.

21. An on-chain transaction of, for example, the transfer of one Bitcoin from X to Y will at its simplest involve the following: X's Bitcoin will be recorded on the ledger as being held at a particular "public address" specified on the blockchain. That public address (sometimes called a "public key") is a string of 64 hexidecimal characters (0-9 and A-F), which does not name X. However, X can prove to Y that X owns that Bitcoin because X controls the "private key" necessary to authorise transactions in that Bitcoin held at that public address. The "private key" is like a password, and is another string of 64 hexidecimal characters. To effect the transaction, Y will give X the "public address" to which Y wishes the Bitcoin to "move" – that is, so that the next published block on the blockchain then shows that that Bitcoin is no longer held at the public address to which X controls the relevant private key, but is now held at another public address, being the public address nominated by Y. One assumes that Y controls the relevant private key of the public address nominated by Y (although it could be possible for Y to "give it away"

by transferring it to a public address to which a third party controls the private key).[1] Once X has the public address nominated by Y, then X can authorise that "transfer" (the publication of a new block with Bitcoin being recorded on the ledger as being held at the public address nominated by Y) by "signing" the transaction through application of X's private key. This is discussed further, in relation to the FTX International Platform, in Section 6 below.

22. In practice, parties can and do also agree to transfer digital assets between themselves without involving the blockchain at all – often referred to as "off-chain" transactions. So, for example, X may simply agree by contract to transfer X's Bitcoin to Y. There is a question as to how this contract would be performed, but it would be possible for X to provide control over the private key relating to the public address at which that Bitcoin is recorded on the ledger to Y, so that Y then controls the relevant private key (for instance, if the private key is saved onto a usb drive, X could physically transfer the usb drive to Y). This is discussed further, in relation to the FTX International Platform, in Section 6 below.

23. The question as to whether Bitcoin, and other digital assets like it, are "property" for the purposes of law, and if so, who owns such property, are questions of legal analysis which are beyond the scope of this affidavit. However, currently the weight of English judicial authority and commentary (including influential analyses by the Law Commission of England and Wales) is that digital assets like Bitcoin are "property". Moreover, English and some Commonwealth case law recognises that it is property which can be held on trust – that is, it is property which satisfies the "first certainty" of the "three certainties" for the voluntary creation of a trust: it is subject-matter which is sufficiently certain to be able to be held on trust.

24. However, it is thought that the relevant private key is not itself property but is just a piece of information (the relevant 64 hexidecimal string) that gives access to the property that is the digital asset.

25. In this affidavit, I use the term "**digital assets**" to refer to what is commonly called "cryptocurrency", "cryptotokens", "cryptocoins", "tokens", "coins" and "virtual assets",

[1] If Y did not want to "give it away" but simply got his public address wrong by mistake, such that Y does not control the private key of the incorrectly specified public address, then Y would "lose" the Bitcoin entirely.

and all tokens or coins accepted on the FTX International Platform, including FTT and Serum, two particular tokens created by entities related to FTX DM.

26. Fiat currency – that is, currencies issued by (or under the authority of) sovereign states – will be referred to as "**fiat**".

(2) The history of FTX.com

27. FTX Trading Ltd ("**FTX Trading**") was incorporated on 2 April 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua and Barbuda (the "**Antigua Act**"). At page **[13]** of Exhibit **"BCS-1"** is a copy of FTX Trading's Certificate of Incorporation.

28. Immediately following its formation, FTX Trading was then based in the Hong Kong Special Administrative Region of China ("**HKSAR**"), where the FTX group was headquartered. Its business was the provision of the FTX International Platform on the FTX.com website.

29. By 2021, a US version of the FTX Platform (the "**US Platform**") had been created which was directed towards US users, as the original FTX Platform barred US users (and users from certain other jurisdictions). The original FTX platform, running via the FTX.com website, therefore became the digital asset exchange platform for all users located outside the United States (the FTX International Platform). Based on analysis of platform data reviewed to date, by 2022, over 9 million customers had Accounts on the FTX International Platform and on the US Platform, with most (possibly more than 7.5 million) being customers of the FTX International Platform. Issues arising from this Summons concern only the FTX International Platform.

30. The FTX International Platform permitted non-U.S. customers to engage in various trading activities, including spot trading of supported digital assets, spot margin trading, settlement of over-the-counter (or "off-exchange") trades directly between users, trading in various derivative contracts, including futures (including in particular "**perpetual futures**"), call and put options, so-called "volatility" contracts (the value of which was tied to the overall price movements during a specified period for specified assets), "leveraged" tokens (i.e., tokens evidencing leveraged positions in relation to a futures contract), "volatility" tokens and trading in "non-fungible tokens" or NFTs, *See pages [x]-[x]* of Exhibit **"BCS-1"**

31. A description of how trades were carried out on the FTX International Platform is given in Section 6 below.

32. An early description of the FTX International Platform is that set out in the FTX White Paper dated 25 June 2019 at pages **[14]-[22]** of Exhibit **"BCS-1"**.

33. Prospective users of the FTX International Platform would have to register on the FTX.com website. US customers were not able to open accounts on the FTX International Platform, therefore the FTX International Platform never provided services to US customers. The process of that registration entailed such registered users accepting the then-current ToS.

34. Those ToS referred to accounts maintained on the FTX International Platform in those Users' names into which both fiat and digital assets could (subject to the following) be credited or debited ("**Accounts**").

35. The earliest ToS did not permit Users to transfer fiat to the FTX International Platform. The Accounts therefore would only have credits recorded in digital assets. At pages **[23]-[41]** of Exhibit **"BCS-1"** is a copy of the earliest ToS from March 2020. That is not surprising since, originally FTX Trading did not have a fiat bank account to which users of the FTX International Platform could be directed when transferring fiat.

36. By amendment to the ToS dated 3 December 2021, FTX Trading stated that the FTX International Platform did then "support" various fiat. At pages **[42]-[59]** of Exhibit **"BCS-1"** is a copy of the 3 December 2021 ToS.

(3) Transfer of fiat to (or from) the FTX International Platform – the "fiat@ftx.com" account

37. From a point in time that is presently unclear to the JPLs, but may in fact have pre-dated the 3 December 2021 amendment to the ToS, Users who wished to transfer fiat onto the FTX International Platform were directed to transfer fiat in USD (and possibly other currencies) to an account, or possibly a number of accounts, in the name of Alameda Research Ltd ("**ARL**"), Alameda Research LLC ("**ARLLC**", parent of ARL) or other subsidiaries of ARLLC (the "**Alameda Bank Account**", and the account-holder of that account or those accounts, the "**Alameda Account-holder**"). ARLLC is wholly owned by Sam Bankman-Fried ("**SBF**"), Gary Wang and Nishad Singh (all three, the "**Co-**

founders"). The Alameda Bank Account was, it seems, maintained with Silvergate Bank.

38. The fiat received in the Alameda Bank Account was not then transferred as a matter of course to FTX Trading. Rather such receipts were simply reflected as debits in an account on the FTX International Platform designated as "**fiat@ftx.com**". It is a matter of legal analysis what that evidences, but it would appear to evidence at least a liquidated debt owing by ARL to FTX Trading. In addition, given the circumstances in which Users transferred fiat to ARL, it is possible that the Alameda Account-holder held such fiat under some form of trust, for FTX Trading and/or those Users.

39. Upon each such receipt of fiat from Users into the Alameda Bank Account, the Alameda Account-holder would notify FTX Trading, so as to enable FTX Trading then to credit the transferor User's Account on the FTX International Platform. It is a matter of legal analysis whether the credits recorded in those Accounts evidenced a liquidated debt owing from FTX Trading to those Users or something more (that is discussed in Section 15 below).

40. Requests from Users to withdraw fiat standing to the credit of their Accounts, would trigger a request to the Alameda Account-holder to transfer that amount back to the User.

41. There is also evidence that an account with Silvergate Bank in the name of West Realm Shires Services Inc ("**West Realm**") was opened in about April 2021 and used to receive USD from at least some Users of the FTX International Platform. (West Realm is a subsidiary of West Realm Shires Inc, 77.75% owned by the Co-founders. West Realm was the operator of the US Platform).

42. In fact, the FTX International Platform treated USD fiat as fungible (interchangeable) with certain USD-linked stablecoins, in particular USDC (USD Coin), BUSD (Binance USD), USDP (USD Paxos), GUSD (Gemini USD) and TUSD (True USD), and a User who had a credit balance in the User's Account in USD fiat, could choose to withdraw the equivalent amount in any of those USD stablecoins, or vice versa.

43. Transfer of fiat to the FTX International Platform from the second half of 2021 is discussed in Section 9 below.

(4) Transfer of digital assets to (or from) the FTX International Platform

44. When a User wished to transfer digital assets to the FTX International Platform, the User would make a transfer request by selecting various options on the website of the FTX International Platform, and then the code on which the FTX International Platform runs would generate a unique public address on the relevant blockchain for the particular digital asset to be transferred.

45. Upon the digital asset being received at that public address, the code running the FTX International Platform would then credit that User's Account on the FTX International Platform with the same amount of digital assets. (The question of the nature of the User's rights in respect of credit balances in the Account is dealt with in Section 15 below.)

46. Turning back to the public address at which the digital assets were sent by the User: the private key associated with that public address was controlled entirely by code which ran the FTX International Platform and by individuals who, the JPLs' investigations so far reveal, were all based in the HKSAR until they re-located to The Bahamas and became employees of FTX DM in late 2021/early 2022.

47. It would appear that when a User effected an on-chain transfer of a digital asset to that public address generated by the FTX International Platform for the receipt of digital assets, that constituted (at least – but subject to the discussion in Section 15 below) the transfer of full legal title to the digital asset away from that User.

48. Once that digital asset was received at that public address, if the digital asset was something other than Bitcoin, then the balance of each such public address was regularly "swept" into one or more "omnibus accounts" – that is, it was transferred on the relevant blockchain from that initial public address which had been generated for just one User to a public address used by the FTX International Platform for the holding of digital assets of that type from multiple Users. As a consequence, the transferring User's digital assets were then mixed in that "omnibus account".

49. If the digital asset was Bitcoin, however, it would remain in an initial public address (because the transaction costs of a sweep of Bitcoin made it inefficient) but all such public addresses would be treated as if they were a single mixed fund of Bitcoin transferred by any User. Withdrawal requests by a User in respect of Bitcoin would be fulfilled by the transfer of any Bitcoin, not necessarily the same Bitcoin that that User may have originally transferred nor even from the same public address into which that User may

have originally transferred Bitcoin. All such public addresses would be controlled by a small number of private keys.[2]

50. Where a User wished to transfer digital assets standing to the credit of the User's Account off the FTX International Platform, the User would have to supply a public address to which that transfer could be made on-chain, and the transaction would be signed by application of the relevant private key held in the FTX International Platform's code.

(5) FTX private keys

51. The private keys for each of the "omnibus accounts" (at least one for each digital asset type for each blockchain) and each Bitcoin public address would be held on-line in a way in which the code could access, so that transactions requested on the FTX International Platform's website (principally, withdrawal requests) could be automatically executed (and approved by the application of the relevant private key). These "omnibus accounts" and Bitcoin public addresses were regarded as "hot wallets" since their private keys were held on-line.

52. Not all transactions could be executed automatically. The code had some in-built thresholds (such as size of transaction) which would require manual intervention by individuals before the transaction was executed.

53. If the aggregate of digital assets held in these hot wallets exceeded a certain amount, the excess would be transferred into "warm wallets". In practice these warm wallets would only hold Bitcoin, Ether, and FTT since the holding in other digital assets never triggered a transfer out of the hot wallets.

54. The warm wallets were other public addresses on the relevant blockchains, where the relevant private keys were not directly accessible by the code on which the FTX International Platform ran, but the private keys were in the control of the Co-founders. Those private keys were however still kept on line albeit in an encrypted form.

55. There were also "cold wallets" which held excess Bitcoin, Ether and FTT, where again the private keys were only accessible by the Co-founders, albeit that those private keys were (despite the designation as "cold") kept on-line in an encrypted form. The JPLs are still

[2] This is technically possible because the public address/private key pair is in fact always generated starting from a private key, and a private key can generate a number of public addresses controlled by the same private key.

investigating how in practice the warm and cold wallets differed from each other in practice.

56. In practice, if a hot wallet was short of a digital asset which a User had requested be withdrawn, then rather than the warm or cold wallets being drawn on, a "Slack"[3] message would be sent by the FTX settlement team to (among others) Alameda (it is not clear whether this was ARLLC, ARL or another subsidiary of ARLLC), and the Alameda entity would transfer to the hot wallet the requisite quantity of digital assets. It does not appear that a fee was charged for providing this service.

(6) Transactions in digital assets on the FTX International Platform

57. Transactions in digital assets on the FTX International Platform, or transactions from fiat to digital assets or digital assets to fiat on the FTX International Platform, would typically be executed simply by way of debit and credit entries to the relevant Users' Accounts on the platform. There would not be any matching transactions on the chain to mirror those recorded in the Accounts.

58. Some of the transactions were "futures" which would not involve the spot exchange of fiat or digital asset for other digital assets, but rather were contracts entered into on terms set out on the FTX International Platform's website. The JPLs are still investigating the pattern of trading on the FTX International Platform but at present believe that the "perpetual future" was the service which generated the most income and volume on the FTX International Platform.

59. It is a question of legal analysis of the May ToS and the LTB Collateral Agreement (defined below), in light of the relevant factual background and any relevant market practice, whether such perpetual futures were contracts between a User and another User, or between a User and FTX DM which provided that service.

60. What is clear, however, is that futures trading like this required Users to post margin – that is, subject digital assets which they had standing to the credit of their Account to a security arrangement in favour of the counterparty to that futures trade (whoever that counterparty was).

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[3] Third party messaging service.

61. On 1 June 2020, FTX Trading and LT Baskets Ltd (a company incorporated in Antigua and Barbuda) ("**LTB**") (now a Chapter 11 Debtor) entered a Collateral Agreement relating to the holding of collateral that Users would have to provide in respect of leveraged and margined products on the FTX International Platform (the "**LTB Collateral Agreement**"). This provides that when a User was required to post margin, FTX Trading would transfer certain tokens to LTB, who would hold them on behalf of the counterparty in whose favour that margin was being posted. It would appear that, once margin was posted and the digital assets transferred to LTB, LTB held them on trust for the User's counterparty. At pages **[141]-[144]** of Exhibit **"BCS-1"** is a copy of the LTB Collateral Agreement.

(7) Migration to The Bahamas

62. In 2020, The Bahamas adopted a licensing and regulatory regime for the digital asset industry pursuant to the DARE Act.

63. On 22 July 2021, FTX DM was incorporated in The Bahamas.

64. In August 2021, FTX DM prepared a document entitled "FTX Digital Markets Limited Customer Migration Plan" (the "**Migration Plan**"), which stated that the objective was "*to migrate customers to its business from FTX* [Trading]". The Migration Plan envisaged KYC on-boarding and new terms of service. "*Front end and back end systems should also reflect a shift of activity to FDM as smoothly as possible, subject to regulatory consideration*". The Migration Plan also envisaged that users of the FTX International Platform would be required to accept the new terms of service, and that the migration would be complete by 2023, but with all "institutional" users being migrated by Q2 2022. At pages **[145]-[149]** of Exhibit **"BCS-1"** is a copy of the Migration Plan.

65. On 10 September 2021, FTX DM was registered as a digital asset business under the DARE Act. FTX DM was the only FTX entity licensed to run a digital assets business under the DARE Act and it was licensed to carry out the majority of the products on the FTX International Platform. On 10 November 2022, the SCB suspended FTX DM's registration.

66. On 20 September 2021, SBF, the 100% owner of Paper Bird Inc, which was the 75% owner of FTX Trading, announced that "FTX" would be moving the headquarters of the FTX International Platform from the HKSAR to The Bahamas. Four days later, SBF re-

emphasized the relocation by tagging the official FTX twitter account and stating "[w]*e're really excited to be setting up @FTX_Official's headquarters in the Bahamas*!" At pages **[150]-[151]** of Exhibit **"BCS-1"** are copies of the tweets from SBF.

67. The incorporation of FTX DM and the move of the Co-founders to The Bahamas was principally in order to bring the FTX International Platform under the regulatory regime of the DARE Act.

68. The first employee of FTX DM was employed in September 2021. The Co-founders became employees of FTX DM, as did approximately 80 other individuals working for FTX DM in The Bahamas.

69. In October 2022, *The Bahamas Tribune* reported that FTX DM's headquarters would be located on a "*4.95 acre site, located between Bayside Executive Park's existing buildings and the Orange Hill Beach Inn, will feature two boutique hotel buildings covering a total 77,000 gross square feet and spanning seven levels, with parking area 51,000 gross square feet in size. Residential and office spaces, also spread over seven levels, will cover 116,000 gross square feet and be accompanied by a 205,000 square feet parking area.*" Additionally, it stated that "[o]*ther planned facilities include an athletic and wellness area; a theatre; auditorium; conference centre; café/restaurant; retail; a daycare centre; and 'vertical farm'.*" At pages **[152]-[153]** of Exhibit **"BCS-1"** is a copy of The Bahamas Tribune article.

70. The Bahamas Tribune further reported that eventually "*a total of 700 employees will work at the office building, of which 38 are expected to be housed in the boutique hotel and condo hotel. The remaining 662 employees are expected to live off-campus and commute to work. Large events will also be held at the conference centre and auditorium on a quarterly basis, which are expected to draw up to 800 additional guests to the site. The campus is expected to be fully built-out by 2025.*" Further, "[t]*he proposed development will include a total of 612 parking spaces: Twenty-five spaces for the hotel, 75 spaces for the condo hotel and the remaining 512 spaces for the office/convention buildings.*"

71. The Bahamas Tribune stated that the campus headquarters would cost about $60 million, and it published the proposed site plans that had been submitted to the

Department of Physical Planning. At page [**154**] of Exhibit **"BCS-1"** is a copy of the proposed site plans.

72. While this campus development was underway, employees of FTX DM worked from nearby offices at Veridian Corporate Centre.

(8) FTX customer KYC update

73. S. 5(1)(a) of the Register of Beneficial Ownership Act 2018 in The Bahamas requires KYC details of UBOs holding interests of 10% or more in a corporate User, whereas before the migration and when FTX Trading was the relevant FTX entity operating in the HKSAR, only KYC details of UBOs of corporate Users who had interests of 25% or more in a User were obtained.

74. The migration process, therefore, required the manual review of all KYC details held for corporate Users to check whether they already contained KYC for UBOs who had interests of 10% or more (which could incidentally have been obtained when previously obtaining KYC for UBOs with 25% or more). If KYC records were incomplete, then individual corporate Users were contacted and asked for the additional information. If that additional information was not forthcoming, then those corporate Users' Accounts should and would (to the best of JPLs' current knowledge) be closed. There was no possibility of Users remaining Users on the FTX International Platform unless the Bahamian KYC regulations were adhered to.

75. It would appear that the only purpose behind this KYC updating process was to enable existing Users of the FTX International Platform to become customers of FTX DM.

(9) Company bank accounts used for the FTX International Platform

76. Prior to November 2021, FTX Trading had set up a USD bank account with Signature Bank, which was used to receive and send USD fiat from and to Users of the FTX International Platform, especially in 2022.

77. However, in or around November 2021, FTX DM (not FTX Trading) opened accounts in USD, CAD, SGD, HKD, EUR, GBP and CHF with Equity Bank Bahamas (the "**Equity Bank Accounts**"). The Equity Bank Accounts were marked as "client accounts", but there is evidence which makes it unclear as to the weight to be put upon those words.

However, only the accounts denominated in CAD and GBP appear to have been used, and then only to fund withdrawals. Withdrawals from those Equity Bank Accounts in those currencies were then reflected as debits to that User's Account on the FTX International Platform in the relevant currencies. The JPLs understand that, although the Equity Bank Accounts were opened, they were not used to any significant extent by the FTX International Platform.

78. In the meantime, in January 2022, FTX DM opened USD bank accounts in its name (the "**USD Silvergate Accounts**") at Silvergate Bank. The USD Silvergate Accounts comprised an account titled the "USD Custodial Account" (the bank statements for which included in their heading: "*For exclusive benefit of its customers*") and an account titled the "USD Network Account" which was designated to received fiat from those Users who also had a Silvergate account and who participated in Silvergate's "SEN" programme, allowing for immediate transfers from a User's SEN account to the USD Network Account. ("SEN" refers to "Silvergate Exchange Network" and was an account which allowed account holders to send funds immediately, 24 hours a day, to the account of another SEN account holder, such as FTX DM's USD Network Account.)

79. From January 2022, it appears that the USD Silvergate Accounts began receiving USD fiat from Users of the FTX International Platform, instead of such fiat being sent to the Alameda Bank Accounts.

80. Credits to the USD Silvergate Account were then reflected as credits to that User's Account in USD, with deposits into either or both the USD Custodial Account and the USD Network Account appearing as a single USD credit balance in the User's Account on the FTX International Platform. It appears, therefore, that the two USD Silvergate Accounts were treated as a single mixed fund of USD.

81. At some stage prior to April 2022, FTX DM opened accounts with another financial institution in CAD, EUR, GBP and CHF (the "**FI Accounts**", and together with the Equity Bank Accounts and the USD Silvergate Accounts, the "**Digital Accounts**"). The FI Accounts were marked "FBO" without any express designation as to who they were "for the benefit of".

82. From at least early April 2022 (in respect of the CAD, EUR and GBP accounts) and from early June 2022 (in respect of the CHF account) those FI Accounts began receiving and

holding fiat in those currencies from Users of the FTX International Platform and became the primary accounts for the receipt of fiat, although some fiat was still sent to the Alameda Bank Accounts. Credits to the FI Accounts in those currencies were then reflected as credits to that User's Account on the FTX International Platform in the relevant currencies.

83. It would appear that the intention behind the opening of all of these bank accounts in FTX DM's name was that the existing Users of the FTX International Platform would become customers of FTX DM.

(10) Amendments to the Feb ToS

84. As noted above, the ToS before 3 December 2021 stated that the FTX International Platform did not accept fiat currency. Aside from that change, the ToS remained the same up to and including the ToS dated 28 February 2022 (the Feb ToS). The Feb ToS made reference to the facilities which the JPLs understand were available on the FTX International Platform for many or most customers:

Services	**Clause/page**
Convert Digital Asset to another Digital Asset	5/3
Futures Contracts – quarterly or perpetual	6/4
Leveraged Tokens	7/4

At pages [60]-[78] of Exhibit **"BCS-1"** is a copy of the Feb ToS.

85. The Feb ToS were expressed to be governed by the laws of Antigua and Barbuda, and contained an arbitration agreement by which the parties agreed to submit to arbitration in accordance with the Antigua and Barbuda Arbitration Act (Cap 33).

86. On 13 May 2022 the entirely new May ToS were posted on the FTX International Platform's website. The May ToS were clearly intended to replace the Feb ToS in their entirety. The May ToS set out more Services offered to Users (called Specified Services) and identified which of FTX DM, FTX Trading or LTB would be providing them:

Service Provider	**Specified Service**	**Sched**
FDM	Spot Market	2
FDM	Spot Margin Trading	3
FDM	OTC/OEP Portal	4

FDM	Futures Market	5
FDM	Volatility Market (Options Contract)	6
FDM	Volatility Market (MOVE Vol Contracts)	7
FTXT	Leveraged Tokens Spot Market	8
FTXT	Volatility Market (BVOL/iBVOL Tokens)	9
LT Baskets Ltd	Issuing/redeem Leveraged/BVOL/iBVOL Tokens	10
FTXT	NFT Market	11
FTXT	NFT Listing	12

At pages **[79]-[140]** of Exhibit **"BCS-1"** is a copy of the May ToS.

87. The May ToS were expressed to be governed by English law, and contained an arbitration clause.

88. It is a question of legal analysis as to whether, and if so when, the May ToS superseded the Feb ToS. That in part turns on whether the May ToS replaced the Feb ToS as a result of legal novation or an amendment or both, and whether that occurred under powers given under the Feb ToS or the May ToS or both.

89. It would appear that:

(1) all Users who registered for the first time after 13 May 2022 were bound by (and only ever by) the May ToS;

(2) Users who had registered before 13 May 2022 were bound by the May ToS from (at the latest) when they first logged onto the FTX International Platform after 13 May 2022 to use any Service;

(3) Users who had registered before 13 May 2022 but who never logged onto the FTX International Platform to use any Service after 13 May 2022 remained bound by the Feb ToS.

90. The explanation why some Specified Services appear to have remained with FTX Trading under the May ToS appears to be that the SCB was not willing for FTX DM as a regulated entity to provide those services. For instance, NFTs fell outside the scope of the DARE Act (s. 3(2)(e)).

(11) Role of FTX DM in relation to the Specified Services

91. Some of the Services expressly referred to in the Feb ToS are stated in the May ToS to be provided by FTX DM (spot market, futures market, leveraged tokens). The other Specified Services in the May ToS are not referred to in the Feb ToS at all. The JPLs' investigations are on-going as to the extent to which some, or all, of such services not mentioned were nevertheless provided on the FTX International Platform prior to 13 May 2022.

92. It is a matter of legal analysis whether Services which, under the Feb ToS, were provided by FTX Trading and which under the May ToS were stated to be provided by FTX DM, were transferred to FTX DM, and if so by what means.

93. It appears, though, that FTX DM was intended to step into the shoes of FTX Trading in respect of those Specified Services allocated to it, to the extent that, prior to the commencement of the May ToS, they had been provided by FTX Trading. FTX DM was not acting, for example, as agent for FTX Trading, which would have been contrary to the entire purpose of the "migration".

(12) Obligor in respect of Users' Accounts

94. As noted above, in practice any credit balance on a User's Account in fiat gave the User the ability to withdraw that fiat and transfer it to an account off the FTX International Platform. Similarly, any credit balance in a digital asset gave the User the ability to request the transfer of that digital asset to a public address, in respect of which the User held the private key. This gives rise to two questions:

(1) who is obliged to transfer that fiat or those digital assets, which is the question addressed in this section; and

(2) what is the legal nature of that obligation (is it a personal obligation or a proprietary/trust obligation). That is addressed in Section 15 below.

95. Under the Feb ToS (and its predecessors) there was only one FTX entity which would have been the obligor under Users' Accounts, being FTX Trading.

96. Under the May ToS there are two principal obligors: FTX DM or FTX Trading. In addition LTB is stated to provide token issuance and redemption services for leveraged tokens and BVOL/iBVOL tokens.

97. It would appear as regards the Accounts that there is a unified obligation in respect of any one User, and therefore the obligations can only sensibly be owed by *either* FTX Trading or FTX DM, not both. Furthermore, it is apparent that FTX DM assumed the obligations to Users in respect of the Accounts in light of the matrix of facts surrounding the "migration" including (without limitation):

(1) that the KYC updating process was only necessary if Users were "migrating" to FTX DM, and the core contractual relationship was in respect of Users' Accounts;

(2) that, while "Accounts" were not part of the Services or Specified Services, nevertheless the majority of the Specified Services under the May ToS were provided by FTX DM, and the most used Specified Service (perpetual futures) was provided by FTX DM under the May ToS;

(3) that the FTX group intended to move its headquarters from HKSAR to The Bahamas and to bring itself within the regulation of the DARE Act and the SCB and FTX DM was to be the only regulated entity within the FTX group of companies. It would have been inconsistent with that intention if the important Account obligations were to remain with the unregulated FTX Trading;

(4) that the AML/CFT Risk Assessment document dated August 2021 stated (page 3) that "*FDM will operate a digital platform*" and the Marketing Policy dated August 2021 stated (page 7) that "*FDM operates one website* ..." which indicates that it is FTX DM that is principally responsible for the FTX International Platform, and hence for (among other things) the Accounts; and

(5) (as discussed in Section 13 below) that insofar as FTX DM controlled the private keys to the digital assets which had been transferred by Users to the FTX International Platform, it would be assumed to have ownership of all relevant assets. It would, therefore, have been incongruous if FTX DM did not also have the obligation constituted by the Account to transfer equivalent digital assets to the User upon a withdrawal request. If FTX DM was the obligor in respect of

digital assets standing to the credit of a User's Account, it would have been similarly incongruous if FTX DM was not also the obligor in respect of fiat standing to the credit of a User's Account. All the more so in circumstances where USD fiat was regarded as interchangeable with certain USD-linked stablecoins.

At pages **[155]-[175]** and **[176]-[185]** respectively are copies of the AML/CFT Risk Assessment and Marketing Policy respective.

(13) Owner of assets (digital assets and fiat/account debts)

98. It would appear that the legal owner of digital assets is the person who controls the relevant private key. Prior to late 2021 or early 2022, that was clearly FTX Trading. From at least 13 May 2022, it was FTX DM who owned the digital assets in light of the matrix of facts surrounding the "migration" including (without limitation):

(1) in August 2021, under the name of FTX DM, a "Safeguarding of Assets & Digital Token Management Policy" (the "**Policy Document**") was drafted which assumed that all relevant assets transferred by Users were held by FTX DM (it does not draw a distinction between new Users and existing Users);

(2) insofar as the private keys were deployed by the code, then FTX DM clearly had authority to use at least that aspect of the code; and

(3) insofar as the private keys were in the control of individuals who were based in The Bahamas and employed by FTX DM, then FTX DM had control over the private keys for that reason.

At pages **[186]-[195]** of Exhibit **"BCS-1"** is a copy of the Policy Document.

99. Once FTX DM opened its own bank accounts, fiat from Users was deposited in those accounts and so FTX DM was clearly the legal owner of those deposits as the account-holder.

100. As noted above, when Users transferred fiat to the Alameda Bank Accounts, that then constituted a debt from ARL to (originally) FTX Trading. The question is whether that cause of action against ARL then transferred to FTX DM. Since (as set out in Section 12

above), it would appear that FTX DM became the obligor under the Accounts in place of FTX Trading, it would be inconsistent with that obligation for the ARL debt not also to transfer from FTX Trading to FTX DM.

(14) Rights of owner to use such assets

101. FTX DM in fact:

(1) mixed digital assets or fiat received from Users with other digital assets or fiat received from other Users; and

(2) used such digital assets and fiat for its own purposes, without segregating them from its own digital assets/fiat.

It would seem that FTX DM, as legal owner, had the right to so deal with those assets, subject to the rights of Users discussed in Section 15 below.

(15) Nature of rights of Users

102. This is a key question for Users, as demonstrated by correspondence received from investors.

103. It is a matter of legal analysis whether Users' rights against the owner of the digital assets and fiat are personal or proprietary, in light of the relevant factual matrix, including the way in which FTX DM used the digital assets and fiat (see Section 14 above).

(1) If merely personal rights then:

(a) in the case of fiat credit balances, they would be to pay fiat as a liquidated debt, in the same way as a bank has a personal obligation to pay a depositor;

(b) in the case of digital asset credit balances, they would be to transfer to the User equivalent digital assets, in the same way as a counterparty to a repo/repurchase agreement has a contractual obligation to transfer equivalent assets under the "off-leg" of that repo.

(2) If proprietary rights then:

(a) in the case of digital assets, it is a matter of legal analysis whether it is possible for Users:

(i) to retain full legal and beneficial title, in the same way that a bailor retains full beneficial and legal title to bailed goods; or

(ii) only to retain a beneficial interest, under a trust; and

(b) in the case of fiat, whether it is a beneficial interest under a trust.

104. The situation might differ as between the Feb ToS (and previous ToS) and the May ToS.

105. The Feb ToS do not contain any express reference to Users retaining any proprietary interest in digital assets or fiat once the User has transferred them to the FTX International Platform.

106. It is presently unclear if and when the Policy Document was published on the FTX website but it states (among other things) that FTX DM "*will ensure that*":

(1) "*Customer assets (both fiat and virtual assets) are segregated from its assets*";

(2) "*All third-party providers are aware that customer funds do not represent property of FDM* [FTX DM] *and are therefore protected from third-party creditors*"; and

(3) "*All third-party providers are aware that customer assets are held in trust*".

107. It states that "*Customer monies will be appropriately ring-fenced to protect from: ... The unlikely event FDM becomes insolvent*".

108. The May ToS introduced cl 8.2.6 which provides:

> "*All Digital Assets are held in your Account on the following basis:*
>
> *(A)* ***Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading. As the owner of Digital Assets*** *in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account.*

*(B) **None** of the Digital Assets in your Account are **the property of**, or shall or may be loaned to, **FTX Trading**; FTX Trading does not represent or treat Digital Assets in User's Accounts **as belonging to FTX Trading**.*

(C) You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms), you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party."

109. It is a question of legal analysis whether it is possible to have a bailment of digital assets and whether the May ToS creates a valid bailment of digital assets.

110. The Policy Document by contrast implies that a trust of both digital assets and fiat is intended. However, it is at present unclear to the JPLs whether the Policy Document was expressly incorporated into any ToS.

111. It is a question of legal analysis whether, in light of the Policy Document, cl 8.2.6 should be recharacterized as an intention merely to reserve to the Users the beneficial interest, not "title".

112. By contrast, the May ToS specifically refers to the creation of a trust in one particular, narrow circumstance (cl 9.2). Moreover, the LTB Collateral Agreement might be seen to be inconsistent with FTX Trading (and, to the extent FTX DM steps into FTX Trading's shoes, FTX DM) holding digital assets on trust prior to the relevant User posting them as collateral, since if those digital assets were always held on trust, then the trustee could simply declare that it now held them for the counterparty for so long as the margin had to be posted. It would not be necessary for the digital assets to be transferred to another entity entirely (LTB) to hold on trust for the counterparty.

(16) Appointment of representative creditors

113. It may be seen from the description of the various complex issues in this case that this application is one where the Court is likely to be assisted by adversarial argument.

114. Persons with claims or potential claims against FTX DM will, or may, wish to be heard on the following questions, including whether:

(1) Users who registered on the FTX International Platform for the first time on or after 13 May 2022 were bound only by the May ToS;

(2) Users who registered on the FTX International Platform prior to 13 May 2022 and continued to use it after 13 May 2022 were bound by the May ToS from (at the latest) when they first logged onto the FTX International Platform after 13 May 2022 and used any Service;

(3) Users who had registered prior 13 May 2022 but who never logged onto the FTX International Platform to use any Service after 13 May 2022 remained bound by the Feb ToS;

(4) The counterparty in respect of perpetual future contracts transacted on the FTX International Platform on or after 13 May 2022 was FTX DM or a User; and

(5) Any User has a trust claim or other type of proprietary claim against FTX DM.

115. As to sub-paragraph 114(5) above, certain people have made claims that their assets are held on trust. After this application has been issued the JPLs intend to contact these parties to inquire whether one or more would be prepared to act as a representative party to advance arguments that Users' assets are held on trust by FTX DM and, if yes, the rights and obligations associated with the trust.

116. As to the appointment of representative parties in relation to the issues identified at sub-paragraphs 114(1) to (4) above, after issue of this Summons, prior to the first hearing of the application the JPLs will seek to engage with appropriate representative parties who might be willing to act in a representative capacity.

117. In the event that the Court appoints one or more representative parties in relation to certain issues, in order to assist the Court and in the interests of ensuring that all arguments are canvassed before the Court and saving costs, the JPLs would propose advancing arguments against those being advanced by the representative parties. So, for example, the JPLs would advance arguments against the proposition that digital assets and fiat currency are held on trust, alternatively, if there is a trust, the JPLs would advance arguments on the type of trust and the availability or otherwise of tracing. JPLs reserve the right to put an affirmative case on any questions arising from this Summons which the JPLs consider affect issues fundamental to the liquidation including the rights of persons other than Users/Customers.

118. If no representative party is willing to appear on any particular issue the JPLs would seek to address both sides of the argument. It is obviously important for the Court to hear both sides of the argument. It is also important that the Court hears arguments on behalf of unsecured creditors.

Conclusion

119. There is some urgency in obtaining the directions sought in this Summons. Until directions have been given by this Honourable Court, there will be no clarity as to the rights of Users or of the assets to which FTX DM is entitled. The issues are complicated and are likely to take some time to unravel. Given the sums involved, as indicated above, there are also likely to be one or more appeals from the directions of this Honourable Court. For these reasons the JPLs have made this application without having information that is currently in the control of the Chapter 11 Debtors. However, as information is released by the Chapter 11 Debtors it is anticipated that the factual position will become clearer as the application progresses. If it does, then the JPLs will file further evidence updating the factual position.

SWORN TO before me this)
[x] day of **March**, 2023 at)
Nassau, N.P., The Bahamas)

.....

Before me,

.....

NOTARY PUBLIC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., *et al.*,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date:** **April 12, 2023 1:00 p.m.** **Obj. Deadline:** **April 5, 2023 4:00 p.m.**

MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-US LAW AND OTHER ISSUES

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided here. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

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MISCELLANEOUS

Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, the Joint Provisional Liquidators and Foreign Representatives (the "**the JPLs**") of FTX Digital Markets Ltd. ("**FTX Digital**") submit this motion (the "**Motion**") seeking (i) a determination that the automatic stay does not apply to the proposed filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the **"Bahamas Court**") or in the alternative, (ii) granting relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court. The JPLs request that this Court enter the Order, substantially in the form attached hereto as **Exhibit 1.** In support of the Motion, the JPLs rely upon and incorporate by reference the *Declaration of Metta MacMillan-Hughes KC* ("**MacMillan-Hughes Declaration**") and the *Declaration of Peter Greaves* ("**Greaves Declaration**") filed simultaneously herewith. A copy of the Application is attached as Exhibit A-1 to the Greaves Declaration.

PRELIMINARY STATEMENT

1. On November 10, 2022 (the day before these Chapter 11 Cases were filed), FTX Digital became a debtor in provisional liquidation under the control and supervision of the Bahamas Court (the "**Provisional Liquidation**"). On February 15, 2023, this Court recognized FTX Digital's Provisional Liquidation as the "foreign main proceeding" and the JPLs as the duly appointed "foreign representatives" of the FTX Digital estate in the United States. *See* Case No 22-11217, Order Granting Recognition, Docket No. 129. In connection with that recognition, this Court granted, among other things, "all relief and protection" afforded to foreign main proceedings under section 1520 of the Bankruptcy Code, including but not limited to section 362 of the Code.

2. In their now-recognized Provisional Liquidation, the JPLs are tasked with, among other duties, the duty to maintain the value of the assets of FTX Digital for the benefit of all of

FTX Digital's customers and creditors. Of course, given the admitted "complete absence of trustworthy financial information" for the FTX enterprise, determining which assets and which creditors map to which FTX entity is far from an easy task. *Declaration of John J. Ray III in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 24] ("**First Day Declaration**") ¶ 5. Thus, from the outset of their appointments, the JPLs have actively sought (i) to identify which persons or entities were or are FTX Digital's accountholders, customers, and creditors, (ii) to determine the legal relationship between FTX Digital and those who are identified as such, and (iii) to recover assets for all FTX Digital's stakeholders to be distributed in accordance with Bahamian law and procedure. Greaves Decl. ¶ 8. These issues relating to the identification and protection of FTX Digital's accountholders, customers, and creditors, (the "**Non-U.S. Law Customer Issues**"), are highly complex and turn on key questions of the laws of the Bahamas, Antigua & Barbuda ("**Antigua**") and England. Indeed, the Provisional Liquidation cannot materially progress further unless the Non-U.S. Law Customer Issues are resolved.

3. To that end, the JPLs now seek to file the Application in the Bahamas Court to provide the Bahamas Court with the predicate jurisdiction to answer those Non-U.S. Law Customer Issues necessary to advance FTX Digital's Provisional Liquidation. Because none involve U.S. law, and none of the parties affected are U.S. entities or citizens, the JPLs believe these issues are most efficiently resolved by the Bahamas Court, which routinely considers and applies the Non-U.S. laws at issue. But, the issue of exactly which court is the best court to decide exactly what question is an issue for another day. For now, the JPLs seek only to invoke the jurisdiction of the Bahamas Court to allow for the process of cross-border judicial coordination and resolution to unfold.

4. Importantly, the answers to the Non-U.S. Law Customer Issues are not monolithic. Certain customers and accountholders of the FTX enterprise were indisputably FTX Digital's customers, as the U.S. Debtors admitted in their first day hearing. *See, Hr'g Tr. November 22, 2022*, 26:13-18. ("[A]pproximately 6 percent [of International Customers] were customers of FTX Digital Markets Limited, the Bahamian entity that is under the jurisdiction of the joint provisional liquidators.").[2] Certain other customers of the FTX enterprise might be accountholders or customers of FTX Trading Ltd. ("**FTX Trading**"), which is a U.S. Debtor before this Court. The ultimate legal question is how to sort the entire FTX international account holder and customer constituency – do they map to FTX Digital, to FTX Trading, or to both? But the question at bar is not even who will decide those issues but how we will go about deciding who will decide.

5. In accordance with the court-approved cooperation agreement between the JPLs and the U.S. Debtors (the "**Cooperation Agreement**"),[3] the JPLs sought for months to jointly tee up that issue with the U.S. Debtors. Having had no engagement on the topic, the JPLs sent the U.S. Debtors' counsel a draft of the Application on March 9, 2023 (*see* Greaves Decl. Ex. E.) They then held a telephonic conference with Mr. Ray and his counsel on March 15 in an attempt to discuss a cooperative framework for resolution to all the Non-U.S. Law Customer Issues, in accordance with this Court's Local Rules and the Cooperation Agreement. By these efforts, the JPLs intended to frame a process, described more fully below, in which the two courts with uncontested jurisdiction over the issues – this Court and the Bahamas Court – can resolve which

[2] For the avoidance of doubt, and as discussed further below, the JPLs do not agree that only 6% of the International Customers are customers of FTX Digital.

[3] *See* Settlement And Cooperation Agreement dated January 6, 2023, Case No. 22-11068, Docket No. 402, Exhibit 1.

questions would be addressed in which court, as is common practice in cross-border insolvencies like these.

6. The reaction of the U.S. Debtors to that concept has been, regrettably, frosty. During the meet and confer, they asserted that the mere filing of the Application in the Bahamas would be viewed as a wilful breach of FTX Trading's automatic stay and a material breach of the Cooperation Agreement, both of which would entitle the U.S. Debtors to relief in this Court. At the same time, the U.S. Debtors asserted that (1) none of the Non-U.S. Law Customer Issues could or should ever be litigated, given that in their view the FTX enterprise operated as one economic entity and (2) any litigation over the Non-U.S. Law Customer Issues would be so severely value-destructive that it would "torpedo" the U.S. cases. Days later, the U.S. Debtors immediately made an abrupt unexplained about-face on both of these points and, without ever having had a discussion with the JPLs on the topic, filed an adversary proceeding against FTX Digital, each of the JPLs, and John Does 1-20 (the "**Adversary Proceeding**"). In that Adversary Proceeding, the U.S. Debtors allege (without any specificity) that the creation and entire operation of the FTX Digital estate was an intentionally fraudulent scheme and that therefore, neither the recognized JPLs nor the Bahamas Court in the recognized foreign main proceeding should ever be entitled to any deference, comity, or indeed good standing in this Court. Adv. Pro. No. 23-50145 (JTD). The U.S. Debtors' campaign to disenfranchise the JPLs and the Bahamas Court needs to stop.

7. To be clear, the filing of the Adversary Proceeding was made in direct violation of the Cooperation Agreement and FTX Digital's own automatic stay which came into effect when this Court issued FTX Digital's recognition order. The JPLs will address the consequences of the U.S Debtors' breaches in subsequent pleadings. But for now, and as discussed below, the U.S.

Debtors, in advancing the most un-comitous of agendas in their own cases, seriously misunderstand the extent of section 362 of the Code.

8. ***First***, as set forth in Section I, *infra*, the filing of the Application is merely the expected predicate for any cooperation between this Court and the Bahamas Court regarding the resolution of Non-U.S. Law Customer Issues. Far from portending doom, as the U.S. Debtors have decried, the filing of the Application only begins the legal proceedings in the Bahamas so that this Court and the Bahamas Court may then start to coordinate on deciding legal issues critical to both FTX Digital and FTX Trading's respective proceedings, if agreeable to both Courts. A subsequent comprehensive protocol may then be adopted which will allow for a coordinated claims-distribution process to achieve the goals of both the JPLs and the U.S. Debtors consistent with how the two courts decide. In all cases, both courts will be involved in the restructuring of the FTX enterprise, likely for years to come, so establishing an initial judicial protocol to coordinate between the proceedings (once the Bahamian Application is filed) is necessary if only to manage costs that are already spiralling out of control and to ensure judicial efficiency.

9. ***Second,*** as set forth in Section II, *infra*, the automatic stay in the Chapter 11 Case of FTX Trading does not apply to the filing of the Application. While section 362 is broad, it does not reach so far as to ban the recognized JPLs from asking their own court, which oversees their own recognized foreign main proceeding for guidance on issues central to their insolvency process. This is exactly what the JPLs are seeking to do by the Application – to invoke the jurisdiction of the Bahamas Court, which has the control and supervision of the JPLs and the Provisional Liquidation, to determine the issues of (a) whether the contracts entered into by "FTX customers" using the FTX International Platform prior to the U.S. Debtors' petition date, were novated from FTX Trading to FTX Digital, (b) whether these customers therefore migrated to FTX Digital;

(c) whether digital assets or fiat transferred by customers of the FTX International Platform or presently held in the name of FTX Digital were virtual assets or fiat of FTX Digital in law and, if so, (d) whether such digital assets or fiat are held by FTX Digital in trust for the benefit of its customers, and (e) who is the counterparty in respect of perpetual futures contracts. That's it. None of these issues are deserving of the U.S. Debtors' histrionic allegations that the JPLs' views are "baseless" and only are being interposed to serve "fiduciaries with no constituency but themselves." Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 3.

10. ***Third***, as discussed in Section III, *infra*, even if the U.S. automatic stay were found to apply to bar the JPLs' seeking to determine for whom they serve as fiduciaries, the Court should lift the stay in the Chapter 11 Cases to allow the JPLs to file the Application and invoke the jurisdiction of the Bahamas Court. There is no legitimate reason for the U.S. Debtors to prevent the Bahamas Court from ever obtaining jurisdiction over any of the threshold Non-U.S. Law Customer Issues, particularly while the U.S. Debtors are spending tens of millions of dollars a month on professionals based on the untested legal assumption that the money that they are spending is benefitting their own customers. In short, lifting the stay would allow the Bahamas Court presiding over the Provisional Liquidation, which regularly considers similar issues of English, Antiguan, and Bahamian law, to begin to address fundamental questions in a timely and efficient manner to the benefit of all stakeholders, without impinging on this Court's jurisdiction over the U.S. Debtors' cases.

11. When one moves past the inevitable and unfortunate rhetoric that has emanated (and will presumably continue to emanate) from the U.S. Debtors' counsel in New York, the U.S. Debtors cannot possibly be prejudiced by the Bahamas Court answering any of the Non-U.S. Law Customer Issues. It is the only court which has both the U.S. Debtors and FTX Digital in

proceedings before it and which is familiar with the applicable law. By contrast, the FTX Digital estate and the JPLs would be significantly prejudiced if this Court were to maintain a stay (to the extent it even applies), effectively stopping FTX Digital's Provisional Liquidation until the JPLs learn from this Court the identity of their own creditors or their own estate's assets via application of non-U.S. law in a cumbersome, foreign-law-expert-driven process. Plainly, considerations of comity and judicial economy support lifting the stay by allowing the key issues of English, Antiguan, or Bahamian law to be resolved by the court that regularly applies those substantive laws particularly where its rulings will have far-reaching implications for bankruptcies of cryptocurrency companies across the entire Commonwealth.

12. ***Finally***, and contrary to the U.S. Debtors' threats, the Cooperation Agreement does not prevent the JPLs from advancing the Provisional Liquidation of FTX Digital by submitting the Application to the Bahamas Court. On the contrary, it expressly identifies and prescribes a known, disclosed dispute over customer mapping. Three months ago, at the first day hearing, counsel for the U.S. Debtors represented to the Court that (1) "94% of the customers on the FTX international platform" were customers of FTX Trading Limited; (2) the remaining 6% were customers of FTX Digital, and (3) while FTX Trading "planned" to migrate its customers to the Bahamian debtor FTX Digital, it failed to do so prior to filing. *Hr'g Tr. November 22, 2022*, 26:13-27:1. At that same hearing, FTX Digital's JPLs flagged for this Court that they did not agree with the U.S. Debtors' factual assertions regarding the migration. *Id.* 57:3-8.[4] With those positions staked out,

[4] Noting the problem of non-engagement, the JPLs raised the customer migration issue again on February 15, 2023, at the hearing about the recognition of FTX Digital's Provisional Liquidation as FTX Digital's foreign main proceeding. *Hr'g Tr. February 15, 2023*, 27:25-28:7 (noting that "determining whether customers were customers of U.S. debtors or Digital is going to be critical to any distribution scheme . . . [And that] . . . There are unresolved legal and factual issues as to the nature of the customers' deposits whether they're held in trust, [and] whether they're general unsecured claims . . . ."). Counsel for the U.S. Debtors acknowledged that, "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues . . . ." about which the parties have a live dispute. *See id.* 30:10-24 ("And so, the

the Cooperation Agreement expressly provides that the parties "will work together and in good faith to determine ownership of assets that are subject to competing claims and to ensure that any court process(es) relating to an adjudication of any dispute are conducted as efficiently as possible." Cooperation Agreement ¶ 11. For months, the JPLs, through counsel, in good faith, sought to engage the U.S. Debtors to address an efficient legal mechanism for resolving the Non-U.S. Law Customer Issues. The U.S. Debtors have never actually engaged, and instead have simply proceeded to administer their cases and expend material resources as if no accountholder or customer ever migrated, ultimately initiating a litigation in breach of FTX Digital's chapter 15 stay and the Cooperation Agreement.

13. In sum, the JPLs submit that the proper procedure here, involving two affiliated debtor estates in separate bankruptcy proceedings in two jurisdictions both of whom need intervention to resolve common legal and factual issues affecting the proceedings, is for the respective debtors to invoke the jurisdiction of each of their courts and have the two courts resolve which court will answer which issues under which procedures. It is not, as the U.S. Debtors posit, to simply have this Court ignore all concepts of comity based on veiled insinuations that the JPLs and their Bahamas Court cannot be trusted with interpreting non-U.S. laws in a proceeding that this Court has already recognized as legitimate.

14. The JPLs therefore ask this Court to declare that the automatic stay does not apply to the Application, or, alternatively, to lift the stay and allow the JPLs to file the Application in The Bahamas without prejudice to entry of a judicial protocol whereby the two involved courts –

statement that Mr. Shore has made in that regard are statements that the U.S. debtors reserve all their rights on and, frankly, disagree with many of them.").

the U.S. and The Bahamas – jointly and collaboratively determine which court will address which of the many Non-U.S. Law Customer Issues that are framed below.

JURISDICTION, VENUE, AND PREDICATES FOR RELIEF

15. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012 (Sleet, C.J.). This is a core proceeding under 28 U.S.C. § 157(b)(2).

16. Under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the JPLs consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

17. Venue in this district for this proceeding and for this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

18. The statutory predicates for this relief are 11 U.S.C. § 362(d), Federal Rule of Bankruptcy Procedure 4001, and Rule 4001-1 of the Local Rules.

BACKGROUND

19. By the Application, the JPLs seek to invoke the jurisdiction of the Bahamas Court to obtain directions as to the Non-U.S. Law Customer Issues. We set forth below those facts most relevant to the Application in particular to make clear just why the Non-U.S. Law Customer Issues are so important for FTX Digital's Provisional Liquidation and just why the Bahamas Court must be involved.

A. History of the FTX International Platform

20. FTX Trading was incorporated on April 2, 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua. Greaves Decl. ¶ 9. Immediately

following its formation, FTX Trading was headquartered, along with the rest of the FTX group of companies ("**FTX Group**"), in Hong Kong, China. *Id.* The FTX International Platform never carried on any business in a market served by FTX U.S. Greaves Decl. ¶ 11.

21. Initially, FTX Trading was responsible for running FTX's international digital asset exchange platform — the platform through which FTX did business with somewhere between 2.5 million to upwards of 7.4 million customers, all located outside the United States ("**International Customers**"). Greaves Decl. ¶ 10. U.S. persons were not permitted to trade on FTX.com, and therefore the JPLs believe that none of the customers affected by the Application are U.S. citizens.[5] Greaves Decl. ¶ 11. So, again, the Application does not affect the rights of any customer of FTX who was bound by a customer agreement governed by U.S. law.

22. At first, most of the International Customers entered into contracts with FTX Trading accepting FTX Trading's terms of service (the "**2019 Terms of Service**"). Greaves Decl. Exhibit C. Antiguan law governs the 2019 Terms of Service.[6] 2019 Terms of Service ¶ 27.

23. The migration of International Customers from FTX Trading was a direct product of the shifting regulatory environment facing FTX. As the U.S. Debtors' counsel stated at the first day hearings, "[i]n November of 2020, the Bahamas passes the DARE Act, a digital assets act, which is intended to encourage the relocation of crypto businesses to the Bahamas. In July of 2021, FTX Digital Markets, the Bahamian single debtor, is formed. And in September of 2021,

[5] *See* Wall Street Journal, 'This Company Was Uniquely Positioned to Fail:' FTX Group CEO John Ray Testimony, YOUTUBE, at 21:25-22:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s. ("**Ray Testimony**"); *see also* First Day Declaration ¶ 33 ("The FTX.com platform is not available to U.S. Users").

[6] As discussed further below, Antigua, like the Bahamas, is a legal system based on the English system, with the ultimate appeal court being the Judicial Committee of the Privy Council consisting of a five-judge panel of justices of the Supreme Court of the United Kingdom.

Mr. Bankman-Fried announces that FTX Digital Markets is going to be registered with the Securities Commission of the Bahamas."). *Hr'g Tr. November 22, 2022*, 23:10-17. To explain further, at FTX's inception, no jurisdiction had a sufficiently regulated exchange system for the sought-after institutional funds that FTX's founders wished to attract. Greaves Decl. ¶ 10. Then, on December 14, 2020, the Commonwealth of The Bahamas enacted a licensing and regulatory regime for the digital asset industry pursuant to the Digital Assets and Registered Exchanges Act of 2020 ("**DARE Act**"). Greaves Decl. ¶ 12.

24. Following the enactment of the DARE Act, the FTX Group openly moved the headquarters of its business operations from Hong Kong to The Bahamas. Greaves Decl. ¶¶ 12-14. Up until the filing of the Adversary Proceeding, there was never any insinuation that the movement of the FTX enterprise to The Bahamas was anything other than a legitimate attempt to take advantage of a new regulatory scheme. Indeed, that movement was from a market that was largely unregulated as to virtual assets (Hong Kong) to one with a detailed regulatory regime (The Bahamas).

25. By July 22, 2021, FTX Digital had been incorporated in the Bahamas. Greaves Decl. ¶ 12. That same month, at least 38 individuals, including the co-founders, senior management, and key employees from entities that employed FTX International Platform employees started the transition to move from Hong Kong to The Bahamas and their employment contracts were transferred to FTX Digital. Greaves Decl. ¶ 14. Before the appointment of the JPLs, FTX Digital employed 83 individuals, most of whom resided in The Bahamas. *Id.* It was suggested that 700 FTX employees would eventually work and live in The Bahamas.[7]

[7] *See* Neil Hartnell, *FTX to hire more than 100 Bahamians for Crypto Work*, The Tribune (October 19, 2022) ("**Bahamas Tribune Article**").

26. In August 2021, more than a year prior to the FTX bankruptcies, FTX Digital prepared a document called "FTX Digital Markets Limited Customer Migration Plan" ("**Migration Plan**") approved by FTX Digital's then-CEO, Ryan Salame, stating an objective "*to migrate customers to its [i.e. FTX Digital's] business from FTX* [Trading]." Greaves Decl. Ex. B.

27. The Migration Plan envisioned that users of the FTX international exchange platform (the "**FTX International Platform**") would accept new terms of service, and that the migration would be complete by 2023, with all "institutional" users being migrated by Q2 2022. Migration Plan at p 5. The Migration Plan's staged transfer of International Customers started with high volume users and ended with lower volume users. *Id*. High volume institutional users were to be migrated under the Migration Plan by Q1 2022, other institutional users by Q2 2022, "low risk" (i.e., users with low know your customer ("KYC") risk profiles) individual users by Q3 2022, and "medium risk" and "high risk" individual users by Q4 2022 and Q1 2023, respectively. *Id*. Explicit in the Migration Plan is that users' entire experience would be controlled and overseen by FTX Digital. *Id.* ("The ultimate objective is a ***smooth transition from a user experience perspective***. Front end and back end systems ***should also reflect a shift of activity to FDM as smoothly as possible***, subject to regulatory considerations.") (emphasis added).[8]

[8] *See id.* at p 4 ("The CEO and CO will engage with FTX customer support and marketing in order to ensure both FTX and FDM are aligned on the transition, from messaging to the operational execution."); *id.* at p 4-5 ("Customers who will be migrated from FTX to FDM will be required to accept new terms of service and the sharing of information from FTX to FDM prior to onboarding. As the migration commences, customers will be notified of the change and will be given a period of 90 days to raise any queries, comments, or concerns to the centralised customer support team, before accepting the new terms of service and sharing of information or withdrawing their funds. If customers do not actively accept the new terms of service or the sharing of information within 90 days and do not remove all of their funds, they will be assumed to have accepted the new terms of service and be migrated."); *id.* at p 4("This policy outlines FDM's approach to the migration of customers from FTX Trading Limited (FTX). In developing this policy, FDM has considered the operational, technical and regulatory aspects of its approach to the migration.").

28. On September 10, 2021, in advance of the Migration Plan, FTX Digital was registered as a digital asset business under the DARE Act, becoming the only FTX Group entity regulated to run the FTX International Platform for most of the products on the platform. Greaves Decl.¶ 15. FTX Digital remains the only FTX entity that was ever licensed as such. *Id.* ¶ 12. By September 24, 2021, FTX Trading officially confirmed that it had moved its headquarters from Hong Kong to the Bahamas.[9]

29. A month later, The Bahamas Tribune reported on the FTX Group's expansive, long term plans to center its enterprise in The Bahamas. Bahamas Tribune Article, *supra note* 7. The Tribune reported that FTX's headquarters would be located on a "4.95 acre site…will feature two boutique hotel buildings" and that "[o]ther planned facilities include an athletic and wellness area; a theatre; auditorium; conference centre; café/restaurant; retail; a daycare centre; and 'vertical farm'." *Id.* It further announced that, "Large events will also be held at the conference centre and auditorium on a quarterly basis, which are expected to draw up to 800 additional guests to the site. The campus is expected to be fully built-out by 2025." *Id.*

30. Between November 2021 and June 2022, FTX Digital opened bank accounts in its name ("**FTX Digital Accounts**") that were used to receive and send fiat currency from and to International Customers. Greaves Decl. ¶ 17. Starting in January 2022, it was clear that International Customers were using the FTX Digital Accounts to deposit and withdraw fiat to and from their accounts on the International Platform. *Id.* From January 20, 2022 through November 12, 2022, the FTX Digital Accounts maintained in FTX Digital's name had receipts of $13.4 billion

[9] Nelson Wang, *FTX Moves Headquarters From Hong Kong to Bahamas*, Coindesk (Sept. 27, 2021), https://www.coindesk.com/business/2021/09/24/ftx-moves-headquarters-from-hong-kong-to-bahamas-report/.

and outflows of the same amount. *Id*. From January 20, 2022 through October 31, 2022, the institutional International Customer account in FTX Digital's name had receipts of $9.2 billion and withdrawals of $8.9 billion. *Id*.

31. On May 13, 2022, six months before any FTX bankruptcy, new International Customer terms of service ("**2022 Terms of Service**") were uploaded to the FTX.com site. Greaves Decl. Ex. D. The governing law of the 2022 Terms of Service is English law. 2022 Terms of Service ¶ 38.11. Customers' acceptance of those terms – like many terms of service in a digital age – were automatic upon use. By logging into his, her or its account and using any of the services on the FTX International Platform, an International Customer would be deemed to accept the 2022 Terms of Service. *Id.* ¶ 22.1. These Terms of Service explicitly specified that FTX Digital was the "Service Provider" for nearly all digital asset product lines offered on the FTX International Platform, and permitted FTX Trading to novate its position under the Terms of Service to another party, including FTX Digital.[10] *Id.* ¶ 37.2; Schedules 2-7.[11] Although the U.S. Debtors try to diminish the role of the Service Provider (Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 38 ("FTX DM had a limited mandate and a limited balance sheet, merely providing certain 'Specified Services' as a 'Service Provider' under the New Terms of Service."), it was actually the Service Provider with control over the accounts according to the "Specified Service description" and

[10] A "Service Provider" is defined as "the entity specified in a Service Schedule as responsible for providing the Specified Service referred to in that Service Schedule." 2022 Terms of Service § 1.1.

[11] Per the 2022 Terms of Service, FTX Trading remained the service provider for the NFT Market (Schedule 11) and the NFT Portal (Schedule 12) (together, the "**Unregulated Services**") because the DARE Act did not permit the Unregulated Products to be migrated to FTX Digital. Greaves Decl. ¶ 16. FTX Trading also remained the service provider for the leveraged tokens spot market (Schedule 8), the BVOL/iBVOL volatility market (Schedule 9) (the "**Other Services**" and together with the Unregulated Services, the "**Remaining FTX Trading Services**"). Based on the information available to the JPLs to date, the Remaining FTX Trading Services that stayed with FTX Trading represented no more than 10% of the business on the FTX International Platform.

"Service Provider" descriptions in each of the Schedules. 2022 Terms of Service, Schedules 2-7; *see e.g.* Schedule 6 ("The Volatility Market is a trading platform on which you can trade Daily MOVE Volatility Contracts, Weekly MOVE Volatility Contracts and Quarterly MOVE Volatility Contracts (collectively, MOVE Volatility Contracts) with other Users, with or without leverage…This Specified Service forms part of the Services and is provided by FTX Digital Markets Ltd."). In other words, if an International Customer accessed his account on or after May 13, 202, FTX Digital became the Service Provider for a customer on the FTX International Platform and was the entity with control over that customer's account and its deposits.

32. Further, any new International Customers who registered with the FTX International Platform after May 13, 2022 became customers of FTX Digital with respect to most of the services offered on the FTX International Platform. *Id.*¶ 1.3.

B. The SCB Revokes FTX Digital's License and Commences FTX Digital's Provisional Liquidation

33. On November 10, 2022, the Securities Commission of The Bahamas ("**SCB**") suspended the registration of FTX Digital under section 19 of the DARE Act. Greaves Decl. ¶ 6. The SCB was, in fact, the only regulatory body worldwide that took any enforcement action against any FTX entity prior to the U.S. Debtors' petition date. On November 10, the SCB petitioned the Bahamas Court for the Provisional Liquidation of FTX Digital, which the Bahamas Court granted. *Id.* The Bahamas Court appointed Brian Simms KC as provisional liquidator. *Id*. On November 14, 2022, the Bahamas Court also appointed Kevin G. Cambridge and Peter Greaves as joint provisional liquidators. *Id*. Pursuant to the Provisional Liquidation order, the JPLs displaced FTX Digital's officers and directors. *Id.*

34. The next day, FTX Trading, along with the other U.S. Debtors, commenced these chapter 11 cases. To date, FTX Trading has listed over 9 million International Customers on its

creditor matrix, more than 7 million of which they allege used the FTX International Platform.[12] As noted above, the issue of which customers would be mapped to which debtor has been a topic of discussion since the first day hearings, with all parties having reserved all rights to claim a customer as either a FTX Trading or FTX Digital customer. *See supra* ¶ 12.

C. Non-U.S. Law Customer Issues

35. As also noted above, the sorting of account holders or customers will involve a series of legal determinations involving the various terms of service under non-U.S. laws, and then when it comes to customer recoveries, U.S. and Bahamian insolvency laws. All of the legal issues raised by the Application turn on questions of non-U.S. law. MacMillan-Hughes Decl. ¶ 5; Greaves Decl. Ex. A. In general, the Application concerns two overarching questions: 1) whether and to what extent the International Customer contracts were novated/migrated to FTX Digital prior to November 2022; and 2) whether and to what extent assets are held in trust by FTX Digital for the benefit of certain or all of its International Customers. Both issues are critical to the proper administration of FTX Digital's estate, and each raises a host of non-U.S. legal issues; including:

Illustrative Foreign Law Customer Issues	Governing Law
1. Interpretation of the customer Terms of Service governing the FTX International Platform, both prior to and subsequent to May 13, 2022.[13]	Antiguan/English[14]

[12] *See* Verification of Creditor Matrix, Case No. 22-11068-JD, Docket No. 574, Jan. 25, 2023; Ray Testimony at 1:17:30-1:19:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s.

[13] Application ¶¶ 1-3.

[14] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
2. Applicable law regarding the novation/migration of customers from FTX Trading to FTX Digital.[15]	Antiguan/English[16]
3. Whether the plan for novation/migration of the exchange business from FTX Trading to FTX Digital was implemented or legally effective.[17]	Bahamian, English or Antiguan[18]
4. The legal terms of commercial arrangements and documents used in connection with the novation/migration and the enforceability thereof.[19]	Antiguan/English[20]
5. The enforceability of the International Customers' advance consent in the applicable Terms of Service to the novation/migration and transfer of customers.[21]	Antiguan/English[22]
6. The enforceability and effectiveness of amendments to the Terms of Service purportedly effective upon next login and use of the services.[23]	Antiguan/English[24]

[15] Application ¶ 2.

[16] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[17] Application ¶¶ 3(a)-(b).

[18] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[19] Application ¶¶ 1-3(a)-(c).

[20] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[21] Application ¶¶ 2-3(a)-(c).

[22] 2019 Terms of Service ¶¶ 27, 29; 2022 Terms of Service ¶¶ 37, 38.11.

[23] Application ¶¶ 1-3(a)-(c).

[24] 2019 Terms of Service ¶¶ 27-28; 2022 Terms of Service ¶¶ 22, 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
7. Whether a partial novation of certain Specified Services to FTX Digital (e.g. in respect of the provision of "futures market") while leaving other Specified Services behind (e.g. "leveraged tokens") was permissible under the applicable Terms of Service. [25]	Antiguan/English[26]
8. In what capacity does FTX Digital hold any digital assets or fiat (including what is the applicable law and whether FTX Digital holds these assets/currency as the legal owner for its own account or on trust).[27]	Bahamian/English[28]
9. If FTX Digital holds any digital assets or fiat currency on trust, what assets are subject to the trust; whether FTX Digital, as trustee, had obligations with respect to the segregation or use of the assets); whether the trust is over a fluctuating pool of assets for the benefit of all International Customers of FTX Digital as co-owners; whether International Customers have any rights to trace their property into specific assets held on trust; what if any rights do International Customers have against FTX Digital in respect of shortfalls in the assets held on trust. [29]	Bahamian/English[30]
10. Whether cryptocurrency or fiat can be held by FTX Digital as bailee[31]	English/Antiguan law/Bahamas[32]

[25] Application ¶¶ 3(a)-(c)

[26] 2019 Terms of Service ¶¶ 27-29, 2022 Terms of Service ¶¶ 1.3, 38.11, Schedules 2-7.

[27] Application ¶¶ 4(a)-(b).

[28] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶¶ 22, 27; 2022 Terms of Service ¶¶ 8.2.6., 38.11.

[29] Application ¶ 4(c).

[30] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[31] Application ¶ 4(d).

[32] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
11. Who is the counterparty to the perpetual futures contracts[33]	English law[34]

D. The English, Bahamas, And Antiguan Laws Applicable To The Non-U.S. Law Customer Issues

36. As depicted in the foregoing chart, one or more of English, Antiguan, or Bahamian law govern all of the issues framed by the Application. The governing law of the 2022 Terms of Service is English Law;[35] the governing law of the terms of the 2019 Terms of Service is Antiguan law.[36] In addition, certain relevant regulatory and insolvency issues are governed by Bahamian law, as FTX Digital is a Bahamian International Business Company ("IBC") in liquidation. MacMillan-Hughes Decl. ¶ 5. Trust issues are also likely to be governed by Bahamas, English or Antiguan law, which is also a question that the Bahamas Court will need to adjudicate. *Id.*

37. What is most relevant (and perhaps most obvious) is that none of the issues framed in the Application are governed by U.S. law. The FTX International Platform was not even available to U.S. users. *See* First Day Declaration, ¶ 33 ("The FTX.com platform is not available to U.S. Users."). Rather, the 2022 Terms of Service explicitly state, "Our services are not offered to Restricted Persons or persons who have their registered office or place of residence in the United States of America or any Restricted Territory." 2022 Terms of Service at 1. *See id.* at 6-7 ("In order to be eligible to open an Account or use the Services you must meet the following eligibility

[33] Application ¶ 5.

[34] 2022 Terms of Service ¶ 38.11

[35] 2022 Terms of Service ¶ 38.11.

[36] 2019 Terms of Service ¶ 27.

criteria . . . 4.1.4 You do not have your registered office or place of residence in the United States of America or any Restricted Territory.").

38. As to the non-U.S. laws that are, in fact, applicable here, The Bahamas and Antigua are members of the Commonwealth of Nations – a political association of 56 states, the majority of which are former territories of the British Empire. MacMillan-Hughes Decl. ¶ 6. The legal systems of both The Bahamas and Antigua are based on English common law. *Id.* Because certain of the legal issues set out in the Application are novel issues (due to the technology surrounding digital assets) of English, Antiguan or Bahamian law, they are likely to generate appeals. *Id.* ¶ 9. The final court of appeal for both countries is the Judicial Committee of the Privy Council of the United Kingdom (the "**Privy Council**"), a five-judge revolving panel sitting in London, England made up of Justices of the Supreme Court of the United Kingdom, the latter court being the final court of appeal for appeals from decisions of the courts of the United Kingdom. *Id.* ¶ 7. The decisions of the Privy Council are binding in the courts of the territory from which the appeal is made and, are of strong persuasive authority in other territories of the Commonwealth that still allow for appeals to the Privy Council (such as The Bahamas and Antigua) and in the United Kingdom. *Id.*

E. The Next Procedural Steps In The Bahamian Liquidation After the Joint Provisional Liquidators File the Application

39. When the JPLs file the Application, the Bahamas Court is expected to schedule a prompt, initial hearing to enter a case management order. MacMillan-Hughes Decl. ¶ 10. Among other things, the case management order will address issues such as case scheduling, the filing of any affidavit evidence (and reply evidence), written submissions, and determining who should be notified of the Application (including customers who have already submitted claims in FTX Digital's Claims Portal). *Id.* All parties who have an interest in the Application will have the right

to appear and be heard individually or in a representative capacity. *Id.* Importantly, if they so choose, the U.S. Debtors may appear and request that the Bahamas Court defer to the U.S. Court for resolution on any issues framed by the Application. *Id.*

40. Absent any abstention, the JPLs expect that the Bahamas Court will address each of the non-U.S. law questions in an efficient manner. *Id*. ¶ 11. And, while it is difficult to say with certainty how long it will take that Court to rule, the return date for FTX Digital's winding up Petition is August 10, 2023, and the JPLs expect the Court to rule on the Application before this date. *Id.*

41. The laws of The Bahamas also provide for a robust appeal process following any ruling. *Id*. ¶ 12. All parties in interest, including the U.S. Debtors, if they engage in the Application, will have the opportunity to appeal (or seek leave to appeal) the decision to the Court of Appeal of the Commonwealth of The Bahamas, and ultimately to the Privy Council. *Id.*

F. The Cooperation Agreement

42. On January 6, 2023, the JPLs and the U.S. Debtors entered into the Cooperation Agreement. The Cooperation Agreement, among other things, (i) provides that the U.S. Debtors and the JPLs will support the Provisional Liquidation of FTX Digital and the Chapter 11 Cases, respectively (¶¶ 12-13); (ii) renders the JPLs responsible for recovering all assets and value of FTX Digital (¶ 4); and (iii) authorizes the JPLs to manage the disposition of property held by Bahamas-based FTX Property Holdings, Ltd. (¶ 15). Both this Court and the Bahamas Court have approved the Cooperation Agreement. Case No. 22-11068, Docket No. 683. Order (Settlement and Co-Operation Agreement), 10, February, 2023, attached hereto as **Exhibit 2**.

43. By design, the Cooperation Agreement does <u>not</u> compromise any rights or obligations arising from the novation/migration of International Customers to FTX Digital. *See*

Cooperation Agreement ¶ 10. All rights of the Parties with respect to those issues are expressly preserved.[37] The Cooperation Agreement also states that "recognition in The Bahamas will not require the Bahamas Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the JPLs in The Bahamas Proceedings with respect to property of the estate of FTX Digital (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 13. A corresponding provision addresses the role of this Court: "recognition under Chapter 15 would not require the U.S. Bankruptcy Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the Chapter 11 Debtors in the Chapter 11 Cases with respect to property of the estate of the Chapter 11 Debtors (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 12. In other words, the Cooperation Agreement itself contemplates a process by which the two affected courts will themselves have to coordinate on key issues affecting the FTX estates.

G. The U.S. Debtors' Lawsuit Against FTX Digital and the JPLs

44. As discussed above, the JPLs gave the U.S. Debtors advance notice of their intent to file the Application by way of letter dated March 9, 2023. *See* Greaves Decl. Ex. E. The JPLs did this in an effort to cooperate and coordinate with the U.S. Debtors, with the goal of ensuring an efficient resolution of these important legal issues. The JPLs also gave advance notice to the

[37] The Cooperation Agreement states: "This Agreement does not address or compromise any rights or obligations of any Party arising out of or related to the user agreements or other arrangements relating to the International Platform or any other matter not specifically addressed in this Agreement." Cooperation Agreement ¶ 10.

U.S. Debtors that they would be seeking leave from the Bahamas Court to file this Motion, and counsel for FTX Trading appeared and were heard by the Bahamas Court on this issue at a hearing on March 20, 2023. At that hearing, counsel for the U.S. Debtors did not object to the JPLs' request to file this Motion. The Bahamas Court granted leave on March 21, 2023 (the "**Bahamas Lift Stay Order**"), paving the way for this Motion. Greaves Decl. Ex. H. As set forth in the Bahamas Lift Stay Order, the Bahamas Court expressly recognized that "*the issues raised by [FTX Digital's] officers, the JPLs, in the proposed [Application] is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd. in this Honorable Court.*" *Id*. at 2. (emphasis added)

45. Given the importance of prompt resolution of the Application the JPLs actively sought to engage the U.S. Debtors in discussions around coordinated, efficient, proceedings to resolve the Non-U.S. Law Customer Issues. After a letter campaign on the issue (*see* Greaves Decl. Exs. E-G), on March 15, 2023, the JPLs, their counsel, Mr. Ray and counsel to the U.S. Debtors held a virtual telephonic conference. The call began constructively, and the JPLs explained what it was that they were seeking to do and why it was important to proceed with filing the Application – to fulfill their duty to make a recommendation to the Bahamas Court on whether liquidation or reorganization of FTX Digital will serve the best outcome for FTX Digital's estate, its customers and its creditors. The JPLs explained that they could not progress towards this goal without an understanding of (i) who FTX Digital's customers and creditors are, and (ii) the scope of FTX Digital's rights to its and its customers' assets. Despite the JPLs' efforts to keep the discussion productive, it soon turned unproductive. The U.S. Debtors noted that FTX Digital was the only FTX entity that was not falling in line with their agenda, that the mere filing of the Application would send a "torpedo" into the Chapter 11 Cases, and that the U.S. Debtors would never consent

to any jurisdiction other than the U.S. to resolve any Non-U.S. Law Customer Issues. While sensitive to the U.S. Debtors' concerns, the JPLs explained that, as court-appointed fiduciaries, they are duty-bound to serve and cannot abdicate their duties in deference to the professionals of an afflicted entity. The JPLs reiterated their view that the best path forward would be to work together and come up with a consensual protocol to resolve all issues as to whose customers were whose. But, because the U.S. Debtors insisted that all Antiguan, Bahamian and English law issues should not be resolved at all, or should all be resolved by this Court at some unspecified future time, there was no engagement on any consensual protocol for a coordinated resolution of outstanding legal issues. The meeting ended with the U.S. Debtors committing only to think further on the issues discussed.

46. Without any further engagement, on March 19, 2023, the U.S. Debtors filed the Adversary Proceeding. Adv. Pro. No. 23-50145, Docket No. 1 ("**Adv. Compl.**"). That filing was never substantively discussed with the JPLs, and instead was filed on one hour's notice to one of the JPLs' attorneys. The complaint seeks declaratory judgment on the same issues that the JPLs had been identifying for months and sought to resolve through a consensual cross-border cooperation protocol between the Bahamas and U.S. courts. Among other things, the complaint asks this Court to declare that no customers ever migrated from FTX Trading to FTX Digital under the 2022 Terms of Service and that FTX Digital has no ownership interest of any kind in any cryptocurrency, fiat currency, customer information, or intellectual property associated with the FTX International Platform *at all*.[38] Adv. Compl. Counts I-IV, ¶¶ 53-87. It also alleges, without any specificity, that every transaction that FTX Digital was involved in during its existence was

[38] The complaint concedes that the 2019 and 2022 Terms of Service govern the relationship between customers and FTX Trading (¶ 36), but fails to mention that those documents are governed by Antiguan and English law, respectively.

fraudulent and is subject to avoidance. *Id*. Counts V-VII, ¶¶ 85-98. The complaint then seeks an order that the U.S. Debtors may recover from the FTX Digital estate all such transfers, and interest thereon to the date of payment, as well as the costs of the Adversary Proceeding. *Id.* at 26 (Prayer for Relief No. 6). The complaint specifically references recovering from FTX Digital's accounts at Moonstone Bank and Silvergate Bank, both of which are located in the U.S.

47. Most inflammatory, the complaint alleges, in contradiction of the U.S. Debtors' prior statements to this Court, that Mr. Sam Bankman-Fried ("**SBF**") moved the FTX enterprise to The Bahamas for the sole purpose of funneling customer deposits and valuable property to The Bahamas, "out of the reach of American regulators and courts." *Id.* ¶ 23. Bizarrely, the U.S. Debtors also allege, for the first time, that FTX Digital's "formation and existence" was in furtherance of FTX's criminal conspiracy (*Id.* ¶ 21) despite the fact that SBF was the same individual who hired the U.S. Debtors' counsel and turned his enterprise over to Mr. Ray. Finally, despite the fact that the SCB was the first regulator to take action against any FTX entity, the U.S. Debtors allege that SBF and those he directed "maintained a close accommodating relationship with Bahamian law enforcement agencies" (*Id*. ¶ 24), that FTX Digital was only "ostensibly regulated by The Bahamas" (*Id.* ¶ 25) and that when operating in The Bahamas, SBF and his cohorts were "outside of the reach of any independent and effective regulatory authority." *Id.* ¶ 5. The JPLs and FTX Digital will respond to the complaint in due course and reserve all rights.

RELIEF REQUESTED

48. By the Motion, the JPLs respectfully request the Court to enter an order ("**Order**") substantially in the form attached as **Exhibit 1** (i) declaring that the automatic stay does not apply to the filing of the Application or in the alternative (ii) granting relief from the automatic stay

under Section 362(d)(1) of the Bankruptcy Code to allow the JPLs to file the Application and thereby start the process of a cross-border protocol for judicial cooperation.

ARGUMENT

I. The Filing and Prosecution Of The Application Is A Normal, Expected Predicate For Cooperation Between This Court And The Bahamas Court Regarding The Resolution Non-U.S. Law Customer Issues

49. As noted above, the resolution of all Non-U.S. Law Customer Issues will require both this Court and the Bahamas Court to coordinate on resolving various legal and factual issues and how they pertain to the estates under their jurisdiction.

50. This is, of course, not the first time that a U.S. bankruptcy court, supervising the chapter 11 case of a U.S. debtor, has had to coordinate with a non-U.S. court to come to closure on issues affecting that U.S. debtor's estate. Indeed, U.S. bankruptcy courts have routinely relied on joint protocols in cross-borders cases such as this one, where coordination is necessary in order to prevent conflicts and the waste of estate resources. This Court's Local Rules expressly provide detailed guidelines for judicial cooperation in parallel cross-border insolvencies, including court-to-court communication in such cases.[39] *See* Local Rules for the United States Bankruptcy Court for the District of Delaware, Effective February 1, 2023, Part X ("Modalities of Court-to-Court Communication); *see also* Appendix A to the Local Rules "Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters" (the "**Guidelines**"). The Guidelines, which "should be considered at the earliest practicable opportunity" state, among other things, that "where a court intends to apply these Guidelines . . . it will need to do so by a protocol

[39] While the Local Rules seem to contemplate a single debtor in multiple parallel proceedings, as opposed to closely affiliated debtors in separate proceedings, the same concepts of comity, coordination, and efficiency should apply here, where the U.S. Debtors and FTX Digital were so closely intertwined in their pre-petition operations.

or an order . . .” (Guideline 2) and note that “[i]n the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.” *Id.* n. 3.

51. Three cases are particularly instructive on how U.S. Courts view what should happen in a “normal” cross-border insolvency.

52. In *Nortel Networks Inc.*, the U.S. debtors moved, on the petition date, for entry of a cross-border protocol, which established procedures for the coordination of cross-border hearings between the U.S. and Canadian courts. *In re Nortel Networks, Inc.,* 532 B.R. 494, 501–02 (Bankr. D. Del. 2015). Both the U.S. and Canadian courts approved the protocol and subsequent amendments to the same. *Id.* The protocol provided for communication and cooperation between the two courts, without divesting either court from its respective jurisdictions. *Id.* at 531-532. The protocol provided that the U.S. and Canadian Courts could coordinate to “determine an appropriate process by which the issue of jurisdiction [over specific issues] will be determined” (after submissions from all interested parties). Order Approving Stipulation of the Debtors and the Official Committee of Unsecured Creditors of Nortel Networks Inc., Et Al., Amending the Cross-Border Court-to-Court Protocol at 7, *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jun 29, 2009) [Docket No. 990-1], attached hereto as **Exhibit 3**. Where one Court had jurisdiction over a matter that required the application of the law of the jurisdiction of the other Court to determine an issue before it, the Court with jurisdiction could, among other things, hear expert evidence or seek the advice and direction of the other Court. *Id.* at 7-8. The protocol further provided that the Courts could communicate with each other to determine whether they could arrive at consistent rulings. *Nortel*, 532 B.R. 494 at 532.

53. Pursuant to the *Nortel* protocol, the two courts held a 21-day cross-border, joint evidentiary trial on a central issue in the case (the allocation of proceeds from the sale of various Nortel assets and business units). *Id.* at 499-500. After the trial, the Courts communicated "in an effort to avoid the travesty of reaching contrary results which would lead to further and potentially greater uncertainty and delay. Based on these discussions, the Courts have learned that although their approaches to the complex issues differ, they agree upon the result." *Id.* at 532. In its decision, the U.S. Court noted that, "one of the reasons the cases have progressed to date is that the Courts have communicated and have arrived at consistent rulings even while exercising their judicial independence." *Id.*

54. In *In re Soundview Elite, Ltd.*, the Court *sua sponte* ordered the parties to work together to create a cross-border protocol for cooperation in a case concerning six U.S. debtors and the Cayman winding-up proceedings of three of those U.S. debtors. *In re Soundview Elite, Ltd.*, 503 B.R. 571, 575 (Bankr. S.D.N.Y. 2014). The Cayman liquidators and certain creditors moved to dismiss the U.S. bankruptcy cases or, alternatively, for relief from the stay. *Id.* The debtors, like the U.S. Debtors here, sought to enforce the stay and prevent any activities in the Cayman proceeding. *Id*. Based on considerations of comity, the U.S. Court instead lifted the automatic stay to allow the existing Cayman proceedings for three of the debtors to continue, and "if necessary, to entertain similar proceedings for the three Debtors in this Court that do not have JOLs[.]" *Id.* at 589. The Court also ordered the parties to create a joint protocol to facilitate the cooperative administration of parallel proceedings in the U.S. and the Cayman Islands. *Soundview*, 503. B.R. at 589. In so doing, Judge Gerber reasoned that "the Cayman and U.S. courts can and should work together cooperatively, with due comity to each other, to address the needs and concerns of stakeholders." *Id.* at 595.

55. In *In re Calpine Corporation,* Case No. 05-60200 (CGM) (Bankr. S.D.N.Y. 2005), Calpine Corporation, and its US affiliates (in chapter 11) were subject to a bond-ownership claim by their Canadian affiliates that were in separate Canadian bankruptcy proceedings. Debtors' Motion for an Order to Approve a Settlement with Calpine Canadian Debtors ("Debtors' Motion to Approve Settlement") at ¶¶ 5-12, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jun. 28, 2007) [Docket No. 5113], attached hereto as **Exhibit 4**. Ultimately, a cross-border protocol was negotiated by the parties and entered by both the Canadian and U.S. courts, which was instrumental in settling the bond-ownership issue. Order Approving Cross-Border Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 12, 2007) [Docket No. 4309], attached hereto as **Exhibit 5**; Court of Queen's Bench of Alberta Approval of Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 5, 2007) [Docket No. 4242-3], attached hereto as **Exhibit 6**; Debtors' Motion to Approve Settlement at ¶ 25. At a joint hearing to approve the settlement, Judge Lifland (in the U.S. Court) and Justice Romaine (in the Canadian Court) emphasized the importance of the cross-border protocol in helping the parties reach resolution, and the value-draining alternative that the parties would have otherwise faced. Transcript of Joint Hearing with Canadian Judge in re Debtors' Motion for an Order to Approve Global Settlement with Calpine Canadian Debtors and other Relief at 207:20-24, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jul. 24, 2007) [Docket No. 5749], attached hereto as **Exhibit 7**. (Judge Lifland noting that the settlement and efforts to achieve it "go[es] to demonstrate the desirability of approaching these cross-border matters through a medium of a protocol to allow us all to get access and recognition to our respective courts that way and to appear and be heard appropriately."); *id.* at 45:13-20 (Judge Lifland discussing "the need to enter into protocols so that we can get to a day like today, where all of those very complex issues could be viewed in a different light and a

different perspective, with coordination and cooperation being the watch word which turned out to be --well, I can't prejudge the hearing today, but it does appear that the parties have, at least those who are in support of the settlement, have come together as a unit"); *id*. at 206:18-207:07 (Justice Romaine emphasizing that "the enormous complexity and highly intertwined nature of the issues in this proceeding. The cross-border nature of many of the issues adds to the delicacy of the matter. Given that complexity, it behooves all parties in this court to proceed cautiously and with careful consideration; nevertheless, we must proceed toward the ultimate goal of achieving resolution of the issues. Without that resolution, the Canadian creditors face protractive litigation in both jurisdictions, uncertain outcomes, and continued frustration in unraveling the guardian [sic] knot of intercorporate and interjurisdictional complexities that plagued these proceedings on both sides of the border.").

56. Each of these cases demonstrates that the overriding principles in successful cross-border disputes should be coordination, comity, and conservation of estate resources. The filing of the Application is just the necessary first step in that process, and that filing should happen now.

II. The Automatic Stay Does Not Apply to Filing or Prosecution of the Application

57. As the foregoing cases show, rather than using their respective automatic stays to mire the progress of parallel bankruptcy proceedings, courts charged with presiding over cross-border insolvencies tend to favor cooperation and coordination, if only to avoid the chaos and uncertainty of inconsistent rulings on issues that affect their debtors. Here, however, the U.S. Debtors have claimed that the JPLs' mere filing of the Application, much less its prosecution, would constitute a willful violation of their automatic stay imposed by Section 362. That is simply not true.

58. Section 362(a) of the Bankruptcy Code imposes an automatic stay prohibiting, among other things, "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor[,]" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(1), (a)(3). The JPLs' Application is neither.[40]

59. *First*, Section 362(a)(1) does not apply because the Application is not an action *against* the U.S. Debtors. *Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) ("Although the scope of the automatic stay is broad, the clear language of section 362(a) indicates that it stays only proceedings against a 'debtor' — the term used by the statute itself."). The Application merely frames for the Bahamas Court the issues of: (i) whether the International Customers were migrated to FTX Digital; (ii) if so, when; (iii) if so, what were FTX Digital's obligations to those International Customers; (iv) if the digital assets or fiat were assets of FTX Digital; legally and beneficially; and (v) whether the perpetual futures contracts (which is part of the Services to which only Digital is named as Service Provider under the 2022 Terms) amounted to a contract between or among customers, or between customers and Digital or someone else. These questions can all be answered without necessarily involving FTX Trading.

60. *Second*, Section 362(a)(3) does not apply because the Application does not seek to "obtain possession of property" of the U.S. Debtors' estates or "to exercise control over property of the estate." Although courts have interpreted 362(a)(3) broadly, its application is not limitless. The JPLs have identified no case holding that the U.S. automatic stay can act to prohibit a foreign

[40] The other subsections of Section 362(a) are inapplicable here: Section 362(a)(2) is not applicable as there is no judgment sought to be enforced; Section 362(a)(4) and (a)(5) are not applicable as there is no lien sought to be created, perfected, or enforced; Section 362(a)(6) is not applicable as there is no act to collect, assess, or recover a claim; Section 362(a)(7) is not applicable as there is no attempt to setoff a debt; Section 362(a)(8) is not applicable as the Application is not a proceeding concerning a tax liability.

debtor from determining the nature and extent of the liabilities and assets of its own estate. Importantly, the Application will not have the effect of transferring or voiding any interest in any property of any U.S. Debtor. Rather, were there to be any asset transfers that are necessitated by a ruling of the Bahamas Court on any of the Non-U.S. Law Customer Issues, those will have to be addressed in subsequent proceedings involving this Court.

61. In addressing overlapping insolvency regimes, courts have acknowledged that a debtor taking actions within its rights under the applicable bankruptcy laws does not violate the stay of another debtor – even if those actions have consequences that flow to the other debtor's estate. Cases involving the rejection of contracts between two debtors help clarify this point. For example, in *In re Old Carco,* the debtor car-manufacturer did not have to seek relief from the automatic stay in another debtor's bankruptcy case before exercising its right to reject a contract in the debtor car-manufacturer's case, even though the counter-party to the rejected contract was another debtor. The court held that rejection of the contract was "a fundamental right" of the debtor to not perform its contractual obligations. *In re Old Carco LLC*, 406 B.R. 180, 211-12 (Bankr. S.D.N.Y. 2009); *see also In re Noranda Aluminum, Inc.*, 549 B.R. 725, 729 (Bankr. E.D. Mo. 2016) (when the debtor sought to reject an executory contract that a debtor in a separate case and court sought to accept, allowing the debtor to reject upon satisfying ordinary business judgment test); *In re Railyard Co.*, 562 B.R. 481, 487 (Bankr. D.N.M. 2016) (following *Old Carco* and *Noranda* and granting stay relief to allow the Chapter 11 Trustee to reject the debtor-landlord's unexpired commercial lease with related company also in bankruptcy, even though related company wished to assume the lease). In a similar vein, one bankruptcy court held that a unilateral price increase by one debtor, did not necessarily violate the automatic stay of another debtor (the counterparty to the contract). *In re Nat'l Steel Corp.*, 316 B.R. 287 (Bankr. N.D. Ill. 2004). *Nat'l*

Steel involved a contract for the supply of steel used to make wheels and both supplier and manufacturer had filed their own chapter 11 petitions. Rather than move to assume or reject the contract, the supplier-debtor unilaterally increased its prices after notifying the debtor-manufacturer that the price increase was necessary to enable it to continue shipping steel. *Id.* at 297-98. The manufacturer-debtor opposed the increase but paid the increased price. *Id.* Thereafter, the manufacturer-debtor moved before the supplier-debtor's court, seeking allowance of an administrative expense and alleging, among other things, that the supplier-debtor had violated the manufacturer-debtor's automatic stay. *Id.* at 299-311. The court held that, although the contract was property of both bankruptcy estates, the supplier-debtor did not violate the manufacturer-debtor's automatic stay. *Id.* at 311. The court reasoned that, because the contract was not assumed, it was not enforceable, and therefore the supplier-debtor's price increase did not constitute an act to obtain possession of or control over property of the estate in violation of Section 362(a)(3). *Id.* Unlike the unilateral financial action that was permitted in *Nat'l Steel*, the Application here merely seeks to obtain clarity on novel issues of Bahamian, Antiguan, and English law that directly affect the FTX Digital estate and its creditors.

62. The same reasoning extends to the JPLs' attempts, by the Application, to identify creditors that may have claims against their estate, and the determination of the extent of their estate's obligations and liabilities. It is within any debtor's rights – indeed, it is paramount to any debtor's bankruptcy proceedings – to determine the extent of the debtor's property and its creditor body. The automatic stay does not function to impede these rights, even if exercising them would "affect" the U.S. Debtors.

63. Finally, the filing of the Application is not an act to control or take possession of the property of the estate of FTX Trading. Ultimately, this Court will decide what is, or is not,

property of FTX Trading's estate whether in its own proceeding or by granting comity to the Bahamas Court's process and rulings either on a prospective or post-hoc basis. *In re SCO Grp., Inc.*, 395 B.R. 852, 858 (Bankr. D. Del. 2007) ("[I]t is the very essence of a bankruptcy court's jurisdiction to decide what is property of the estate."). Asking the Bahamas Court to answer the legal questions that must be resolved before this Court can determine what is and is not property of the U.S. Debtors' estates is not an act to take control over that property. While the JPLs certainly believe that the Bahamas Court's answer will be persuasive and should be adopted by this Court, this Court will ultimately decide for itself what effect the Bahamas Court's order has in these cases. For all of these reasons, the proper view is that the automatic stay does not apply to the Application at all.[41]

III. In the Alternative, The Court Should Lift the Automatic Stay to Allow the JPLs to File the Application and Initiate a Cross-Border Protocol

64. Section 362(d)(1) provides that upon request of a party in interest and after notice and a hearing, the court may grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay — for cause. 11 U.S.C. § 362(d). The Bankruptcy Code does not define "cause." It is a flexible concept that is fact intensive, and must be determined case-by-case upon consideration of the totality of the circumstances. *See In re Scarborough St. James Corp.*, 535 B.R. 60, 67 (Bankr. D. Del. 2015); *see also In re Downey Fin. Corp.*, 428 B.R. 595, 608-09 (Bankr. D. Del. 2010).

65. This Court has developed a three-prong balancing test for determining whether cause exists to lift the stay:

[41] The U.S. Debtors' Adversary Proceeding is a different animal entirely, as it names FTX Digital as a defendant and specifically asserts claims seeking to avoid FTX Digital's interests in its own assets in the United States. As to that violation, FTX Digital and the JPLs reserve all rights.

> (i) Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit;
>
> (ii) Whether the hardship to the [movant] by maintenance of the stay considerably outweighs the hardship to the debtor; and
>
> (iii) Whether the creditor has a probability of prevailing on the merits.

In re Scarborough-St. James Corp., 535 B.R. at 68.

66. Courts in the Third Circuit also consider general policies underlying the automatic stay in determining whether to lift it. *In re Abeinsa Holding, Inc.*, Case No. 16-10790 (KJC), 2016 WL 5867039, at *3 (Bankr. D. Del. Oct. 6, 2016). These factors can include considerations of comity and the factors supporting mandatory abstention. *Drauschak v. VMP Holdings Ass'n, L.P. (In re Drauschak)*, 481 B.R. 330, 345-46 (Bankr. E.D. Pa. 2012) (explaining that "[i]ssues of comity and economy may dictate that the non-bankruptcy forum conclude the resolution of . . . [a pending] dispute and the bankruptcy stay should be modified for such purpose" and, "[t]he factors supporting mandatory abstention . . . including judicial economy, would also justify applying the aforementioned exception to modify the automatic stay."); *see also In re SCO Grp., Inc.*, 395 B.R. at 857 (discussing the legislative history of Section 362(d)(1) and the "importance of allowing the case to proceed in the original tribunal so long as there is no prejudice to the estate").

A. The Three Prong Balancing Test Weighs In Favor of Lifting the Stay

1. Resolving the Foreign Law Customer Questions in The Bahamas Does Not Prejudice the U.S. Debtors

67. The first factor in the balancing test is "[w]hether any great prejudice to either the bankrupt estate or the debtor will result from" the proceeding. *In re SCO Grp., Inc.*, 395 B.R. at 857-58; *see also In re Scarborough-St. James Corp*., 535 B.R. at 68.

68. In *Scarborough*, a landlord sought relief from the stay to continue eviction proceedings against the debtor in Michigan state court. The debtor argued that it would suffer

harm if the Michigan litigation continued because (i) a negative determination of the debtor's lease rights would prejudice it in another appeal and, (ii) the Michigan litigation would distract from and interfere with the debtor's reorganization efforts. *In re Scarborough-St. James Corp.*, 535 B.R. at 68. The *Scarborough* court rejected both arguments, finding that there was no prejudice because the issue of "whether or not the lease was terminated prepetition must be decided in order to determine Debtor's interest in the lease . . . [and] . . .the Michigan Court [was] in a position to make that determination and has familiarity with the parties and the facts of the case." *Id.* The court noted that the debtor's rights were not in jeopardy because it could still "raise in the Michigan Court any and all arguments in support of its position." *Id.* The court held that lifting the stay would not cause the debtor great prejudice.

69. Similarly, in the *SCO* litigation, a creditor moved to lift the stay to continue a lawsuit against the debtors concerning software licensing and copyright issues. *In re SCO Grp., Inc.*, 395 B.R. at 856. The court lifted the stay, finding that the debtors would not be prejudiced because, "the Debtors simply cannot file a confirmable plan of reorganization until they know what liability they have to . . . [the creditor]. The resolution of the issues remaining in the District Court litigation will assist the Debtors, not burden them." *Id.* at 859.

70. The facts here compel the same result for four reasons:

71. *First*, the U.S. Debtors cannot be harmed by having the jurisdiction of the Bahamas Court invoked to allow that Court and this Court to decide who decides. The U.S. Debtors consented to jurisdiction in The Bahamas, insisted that they be recognized in that proceeding, and, in fact, have been recognized with full rights of participation. The mere notion, promoted by the U.S. Debtors, that this Court and the Bahamas Court cannot be allowed to talk to one another to explore the contours of an efficient, prompt and coordinated litigation is, frankly, offensive.

72. *Second*, like the *SCO* and *Scarborough* debtors, the U.S. Debtors are not prejudiced by having the Non-U.S. Law Customer Issues submitted to the Court best positioned to resolve them. Indeed, the JPLs submit that the Bahamas Court provides a more appropriate forum for deciding these issues because the Bahamas Court is familiar with the applicable English and Commonwealth laws. This is especially so because the Non-U.S. Law Customer Issues involve largely complex and novel issues of English, Antiguan or Bahamian law relating to cryptocurrency, some of which no court in the Commonwealth has heard before. MacMillan-Hughes Decl. ¶ 9. *See In re DHP Holdings II Corp.*, 435 B.R. 220, 227 (Bankr. D. Del. 2010) (holding that state courts are the best forum to decide novel or unsettled issues of state law); *see also In re A & D Care, Inc.*, 90 B.R. 138, 141-42 (Bankr. W.D. Pa. 1988) (non-bankruptcy court more appropriate especially when the controversy arises on unsettled issue of non-bankruptcy law) (collecting cases).[42] The only alternative – having this Court take jurisdiction over the Non-U.S. Customer Issues – is the least attractive alternative, if only because each party-in-interest on the customer issues, including the JPLs, the U.S. Debtors, the UCC, the Ad Hoc Group of Non-US Customer of FTX, and an unknown number of actual customers would all have to hire and present their own foreign law experts. In contrast, the expert in The Bahamas – the Court – can provide a clear unconflicting depiction of Bahamas law and, unlike almost everyone else in these Cases (save this Court and the U.S. Trustee), will provide its views free of charge.

[42] *See also In re Williams*, 88 B.R. 187, 191 (Bankr. N.D. Ill. 1988) (abstaining from action concerning alleged violation of state insurance laws and reasoning, "[t]he issues are not simple[,]" "[t]he statutes and regulations involved are not clear[,] "[u]nresolved issues of Illinois law are involved[,] and "[s]uch question are best left to the interpretation of an Illinois State judge."); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941) (finding Texas state courts were proper forum to determine state law issues that needed to be resolved); *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940) (affirming Bankruptcy Court's decision that state court was proper forum to determine oil rights, and therefore, the extent of property of the estate); *In re FairPoint Commc'ns, Inc*., 462 B.R. 75, 88 (Bankr. S.D.N.Y. 2012) (finding New Hampshire state courts to be better suited to debtor's rights under the New Hampshire Constitution).

73. *Third*, even an ultimate adjudication of the non-U.S. Law Customer Issues in the Bahamas will not prejudice FTX Trading. As noted, FTX Trading's foreign representative was recognized in the Bahamas, can participate in the Application proceedings, has been involved in the proceedings on the Application to date (through appearing before the Bahamas Court with respect to the Bahamas Lift Stay Order),[43] and will be able to appeal if necessary and if they so choose. *Cf. In re Spanish Cay Co., Ltd.*, 161 B.R. 715, 724-727 (Bankr. S.D. Fla. 1993) (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."). The U.S. Debtors will therefore receive notice and will have the right to oppose the Application and be heard on the matter. Additionally, the laws of The Bahamas provide for due process and a robust appeal process. MacMillan-Hughes Decl. ¶ 12. Courts have recognized that the Bahamian bankruptcy laws are in harmony with those of the United States and should be afforded comity. *See In re Northshore Mainland Servs., Inc.*, 537 B.R. 192 (Bankr. D. Del. 2015) (Winding up Proceeding in the Bahamas was the appropriate forum to adjudicate issues involving the Bahamian Debtor.); *see also Matter of Culmer*, 25 B.R. 621 (Bankr. S.D.N.Y. 1982); *Aranha v. Eagle Fund, Ltd. (In re Thornhill Glob. Deposit Fund Ltd.)*, 245 B.R. 1 (Bankr. D. Mass. 2000) ("The provisions of Bahamian law related to liquidation proceedings are in substantial conformity with our own Bankruptcy Code.").

[43] As mentioned in the Greaves Declaration, through counsel, FTX Trading appeared at the hearing on the Bahamas Lift Stay Order and did not oppose the relief sought by the JPLs in getting leave from the Bahamas Court to file this Motion. Greaves Decl. ¶ 21.

74. *Fourth and finally*, the U.S. Debtors and this Court will not be prejudiced by the adjudication of the Application because it will not ultimately determine what cash or other assets are or are not property of FTX Trading's estate. The Application effectively seeks only to have the Bahamas Court determine (1) which customers are mapped to FTX Digital's estate and (2) what right those customers have in the assets of FTX Digital's estate. Again, courts routinely lift the stay where another court is better positioned to address underlying legal issues, while reserving issues as to how that resolution affects the estate. *See In re Tribune Co.*, 418 B.R. 116, 128 (Bankr. D. Del. 2009) (lifting the stay to allow a California Action to proceed, which would determine whether debtors held rights in the published comic strip series entitled "Dick Tracy" as the questions to be addressed in the California Action would determine whatever rights the debtors held and thus what assets are property of the estate); *Thors v. Allen*, Civ. Nos. 16-2224 (RMB), 16-2225 (RMB), 2016 WL 7326076, at *8 (D.N.J. Dec. 16, 2016) (affirming bankruptcy court decision to lift stay where the state court was "the more capable and the more proper venue to resolve" an issue of state law "that was throwing a wrench in the ability of the bankruptcy to proceed"); *In re Breitburn Energy Partners L.P.,* 571 B.R. 59, 68 (Bankr. S.D.N.Y. 2017) (affirming decision to lift stay to allow Texas court to determine an issue of unsettled Texas law which would "assist [the bankruptcy] court and ultimately contribute to a resolution of the dispute."); *In re Mark Scott Constr., LLC*, Case No. 03-36440 (HCD), at *4-5 (Bankr. N.D. Ind. Apr. 23, 2004) (granting stay relief where Michigan was the proper locale for litigation because, among other things "the Michigan state trial courts have more expertise concerning the interpretation of Michigan's [laws and regulations]," and the contracts at issue were signed in Michigan and involved land and projects in Michigan), attached hereto as **Exhibit 8**; *In re PG & E Corp.*, Case No. 19-30088 (DM), 2019 WL 3889247, at *2 (Bankr. N.D. Cal. Aug. 16, 2019)

(granting stay because, "relief from stay [would] definitively bring a resolution as to Debtors' liability [], and provide an important data point that most likely [would] facilitate resolution of . . . claims in this case."); *see also Int'l Tobacco Partners, Ltd. v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 393 (Bankr. E.D.N.Y. 2011) (implicitly lifting the stay by abstaining in favor of a Massachusetts state court proceeding because it "appears to be the more appropriate forum for determining the preliminary questions: whether [d]ebtor holds a valid assignment under Massachusetts law, and whether that assignment has priority over Ohio's attachment and levy.").

2. The Hardship to the JPLs by Maintenance of the Stay Considerably Outweighs the Hardship to the U.S. Debtors

75. The second lift-stay factor is "[w]hether the hardship to the [moving] party by maintenance of the stay considerably outweighs the hardship to the debtor." *In re SCO Grp., Inc*., 395 B.R. at 857.

76. In this case, the hardship to FTX Digital if the JPLs cannot adjudicate the Non-U.S. Law Customer Issues in The Bahamas far outweighs the hardship to the U.S. Debtors if the Court lifts the stay. Indeed, FTX Digital's Provisional Liquidation cannot proceed without resolving:

- the identity of the creditors to whom FTX Digital owes (or does not owe) money or assets;
- which money or assets are FTX Digital's;
- how expansive the FTX Digital estate is;
- whether FTX Digital's assets are held in trust on behalf of customers or not;
- who the real party in interest is in prosecuting clawback actions to recover FTX Digital's assets;
- who the real party in interest is when defending against claims brought by customers; and
- whether FTX Digital has any contractual rights against, or owes obligations to, customers who held perpetual futures.

As the Bahamas Court has already ruled, each of these issues is "fundamental" to the JPLs' mandatory duty to reconcile claims against FTX Digital's estate and affects all aspects of the FTX Digital estate. Greaves Decl. Ex. H., Bahamas Lift Stay Order, p. 2.

77. Moreover, a correct, binding determination of the customer questions under Bahamas, English and Antiguan law is critical for this Court to eventually equitably adjudicate FTX Digital's rights in the U.S. Debtors' cases. *See In re SCO Grp., Inc.*, 395 B.R. at 859 ("[W]ithout a ruling on the Liability Issues . . . [the creditor's] rights in these bankruptcy cases remains undetermined and the value of . . . [the creditor's] claim will remain a troubling issue for the Court . . . [the creditor] . . . and [d]ebtors."). Indeed, adjudication of the issues within the Application remains fundamental whether done by this Courtbre or by the Bahamas Court. The only difference is that the Bahamas Court would not normally need experts to apply the laws of its own jurisdiction and the Commonwealth, whereas this Court would necessarily have to hear from hired experts on Bahamas, Antiguan and English law governed issues. There can be little doubt that if this Court adjudicates these issues, the estates will incur millions more in fees for expert testimony and for U.S. lawyers just to learn the outer bounds of non-U.S. law. Accordingly, this factor supports lifting the stay.

3. The Merits Weigh In Favor of Lifting the Stay

78. Finally, the third lift-stay factor considered in the Third Circuit is "[t]he probability of the [movant] prevailing on the merits." *In re SCO Grp., Inc*., 395 B.R. at 857. For this factor, "[t]he required showing is very slight." *Matter of Rexene Prod. Co.*, 141 B.R. 574, 578 (Bankr. D. Del. 1992). To meet it, the JPLs merely need to show that their claim is not frivolous. *In re Levitz Furniture*, 267 B.R. 516, 523 (Bankr. D. Del. 2000) ("Defendants have met the third prong, since that merely requires a showing that their claim is not frivolous.").

79. The JPLs clearly exceed that bar here, where there is publicly available documentary evidence that: the FTX Group (1) had a plan to move the international operations to the Bahamas,[44] and (2) began to execute on that plan by, among other things, moving the FTX Group's management team to The Bahamas and establishing the headquarters of the FTX Group there. Greaves Decl. ¶ 14. The U.S. Debtors have also admitted that at least some International Customers of FTX Trading migrated to FTX Digital, *Hr'g Tr. November 22, 2022*, 26:13-18 ("With respect to the Dotcom Silo – and this is the international silo . . . approximately 6 percent were customers of FTX Digital Markets Limited"), and billions of dollars of International Customer money ran through multiple FTX entities' bank accounts.[45] Moreover, the U.S. Debtors have conceded that "open" questions exist about whether the migration of other categories of International Customers were completed as a matter of law. *Hr'g Tr. February 15, 2023,* 30:14-18, 20-21 (U.S. Debtors' counsel stating that "things like assets that were in FTX Digital market accounts, or the migration of customers, and things of that sort. Those are all open issues" and that "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues").

B. Considerations of Comity Also Support Lifting or Modifying the Stay

80. Finally, in addition to all of the foregoing, where a non-U.S. judicial regime is in play, courts within and outside the Third Circuit have considered the same factors that justify abstention, including considerations of comity, to justify lifting the automatic stay to allow

[44] *See* Decrypt, "FTX Relocates from Hong Kong to Bitcoin-Friendly Bahamas", Sept. 24, 2021. Accessible at: https://decrypt.co/81834/ftx-relocates-hong-kong-bitcoin-friendly-bahamas

[45] *See* Ray Testimony (1:12:57-1:13:15) (Ray: "Definitely assets of customers in the Dotcom silo were transferred to Alameda, no question."); *see also id.* (43:25-43:30) (Ray: "We can confirm that funds were deposited directly into Alameda as opposed to FTX.com").

litigation to proceed outside the U.S. *See In re Drauschak*, 481 B.R. at 346; *Pursifull v. Eakin*, 814 F.2d 1501, 1505-06 (10th Cir. 1987) (holding that reasons given by the district court to support abstention constituted sufficient cause for lifting the stay); *In re Spanish Cay Co.*, 161 B.R. at 725 (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."); *see also Int'l Tobacco Partners, Ltd.*, 462 B.R. at 395 (abstaining in favor of a Massachusetts state court proceeding, reasoning that "the interest of justice . . . the interest of comity with State courts [and] respect for State law" tip the scale in favor of abstaining from this matter). Considerations of comity and judicial economy strongly favor lifting the stay.

81. *First*, as discussed above, the Bahamas Court will need to decide the Non-U.S. Law Customer Issues in the context of FTX Digital's Provisional Liquidation–the winding-up or restructuring of FTX Digital will not be possible otherwise because the JPLs will not know what customers and what assets FTX Digital has. This reality – unless addressed through the formation of a cross-border judicial protocol – presents the very real risk for conflicting rulings among this Court, and the Bahamas Court. This would be an inefficient result, and not an equitable one for creditors of FTX Digital or the U.S. Debtors. [46]

[46] *See Arkwright–Boston Mfrs. Mut. Ins. Co. v. City of New York,* 762 F.2d 205, 211 (2d Cir. 1985) (holding that the scales tipped in favor of abstention because the case raised novel issues of state tort and construction law); *see also In re Advanced Cellular Sys.* , 235 B.R. 713, 726-27 (Bankr. D.P.R. 1999) (the court, while ultimately holding that it did not have jurisdiction, observed that it would have to abstain from the adversary proceeding if it had jurisdiction, otherwise it would run the risk of conflicting rulings, piecemeal litigation of the claims, and unequal treatment of claimants); *In re Lafayette Radio Elecs. Corp.*, 8 B.R. 973, 977 (Bankr. E.D.N.Y. 1981) ("[A]bstention avoids the potential conflict and further avoids duplication by the federal court, of the state court procedures.").

82. *Second*, Courts have "frequently underscored the importance of judicial deference to foreign bankruptcy proceedings." *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 207 (citing *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d Cir. 1999)) (abstaining in favor of Bahamian liquidation proceedings); *see also Stonington Partners v. Lernout & Hauspie Speech Prods N.V.*, 310 F.3d 118, 126 (3d Cir. 2002) ("The principles of comity are particularly appropriately applied in the bankruptcy context because of the challenges posed by transnational insolvencies"); *In re Cenargo Int'l*, *PLC*, 294 B.R. 571, 592-93 (Bankr. S.D.N.Y. 2003) (noting prior decision in the *Cenargo* matter to dismiss Chapter 11 proceedings in deference to English administration proceedings); *Maxwell Commc'n. Corp. v. Barclays Bank (In re Maxwell Commc'n. Corp.*), 170 B.R. 800, 817-18 (Bankr. S.D.N.Y. 1994) (dismissing avoidance adversary proceeding in favor of Ch. 11 debtor's U.K. bankruptcy proceeding to allow the U.K. court to decide issues of U.K. law where the challenged transfers occurred in England, the debtors were incorporated and executives ran the company out of England, the loans surrounding the transfers were executed in England and English law were to govern any disputes arising out of the transfers. The Court reasoned that, having found that "English law ought govern, [the issue of whether the preferential transfers were avoidable], considerations of comity dictate that these suits be dismissed.").

83. *In re Soundview,* discussed above, is instructive here. In that case, the Court lifted the automatic stay based largely on considerations of comity. *In re Soundview Elite, Ltd.,* 503 B.R. at 595. . Even though the debtors in *Soundview* had pending U.S. bankruptcy proceedings and their principal places of business were in the U.S., the Court ordered the creation of a joint protocol to allow both proceedings to advance cooperatively, balancing the needs of all stakeholders. *Id.* The Court relied on the reasoning of a Cayman decision which embraced "cooperation and

coordination in cross-border insolvency proceedings where the majority of the investigations to be undertaken for the realization of [debtor's] assets are required to be undertaken in the United States, but the claims that the petitioners and … other investors may have against the company will have to be examined and assessed according to the law of the Cayman Islands." *Id.* (internal citations and quotations omitted).

84. The same reasoning applies even more strongly here where FTX Digital does not have a pending Ch. 11 case, and its place of business was always in The Bahamas. Moreover, in this case, extending comity to the Bahamas Court is particularly important because cooperation will be necessary for any chapter 11 plan for the U.S. Debtors to be enforced in The Bahamas. *In re Spanish Cay Co.*, 161 B.R. at 725 (potential for successful chapter 11 reorganization at best questionable because U.S. court orders may be given no effect in Bahamas); *In re Int'l Admin. Servs., Inc.*, 211 B.R. 88, 93 (Bankr. M.D. Fla. 1997) (noting that bankruptcy court lacks the ability to enforce jurisdiction over property located in foreign country without assistance of foreign court).

85. The U.S. Debtors' U.S.-first position goes squarely against these principles. As discussed above, the JPLs have court-appointed duties and obligations to the Bahamas Court. The JPLs' obligation, just like the U.S. Debtors', is to ensure the highest and best recoveries for the recognized creditors of the estate. But the JPLs cannot produce *any* result for their estate without first answering the threshold questions asked in the Application and in this Motion. The U.S. Debtors instead invite this Court to support their refusal to engage at all on the Non-U.S. Law Customer Issues and to disregard completely the Bahamian Court overseeing FTX Digital's Provisional Liquidation. This Court should decline that invitation. The JPLs have done everything to pay deference and respect to the U.S. Debtors' proceedings and this Court (unlike the liquidators

in *Soundview*, for instance), and this Court should require the U.S. Debtors to do the same for the Bahamas Court and the recognized proceedings before it.

86. *Third*, the Bahamas Court offers a more appropriate forum for resolving the Non-U.S. Law Customer Issues than the U.S. because International Customers of both FTX Digital and FTX Trading would have expected that disputes relating to the Terms of Service would be resolved outside the U.S., by a court familiar with the applicable English and Commonwealth laws, and the opportunity to appeal as far as the Privy Council. *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 206 (dismissing chapter 11 cases in light of a provisional liquidation in The Bahamas and observing that "[e]xpectations of various factors –including the expectations surrounding the question of where ultimately disputes will be resolved –are important, should be respected, and not disrupted unless a greater good is to be accomplished").

87. In that regard, the FTX Group conspicuously relocated its headquarters to The Bahamas in 2021, where the nerve center of its operations and its co-founders were located up until the insolvency proceedings. Greaves Decl. ¶18. FTX Trading operated out of The Bahamas before portions of the International Customers were migrated to FTX Digital. *Id.* Moreover, as a Bahamian regulated entity, it was part of the public record that FTX Digital was licensed under the DARE Act, putting third parties on notice that the FTX Group's international exchange business was operated out of The Bahamas, and subject to the SCB's regulatory oversight. By contrast, the FTX International Platform specifically forbade U.S. users from using the platform. Greaves Decl. ¶11. Moreover, neither FTX Digital nor FTX Trading have a significant creditor body in the United States. First Day Declaration ¶ 33.[47]

[47] There appear to have been a handful of U.S. users that were on the platform improperly. *See* Ray Testimony 2:10:23-2:10:35 "There was a limited number of [U.S. Users] that invested on the .com which was not the intended use of that Exchange"; *see also id.* at 1:11:20-12:00 ("We don't have those kind of

88. *Fourth*, the interests of judicial economy would be well-served by lifting the stay where, as here, the alternative is for this Court to decide unsettled, complex and novel issues of Bahamas, English, and Antiguan law, in a proceeding that is already portending to set records for administrative costs. The decision in *Matter of Williams* is instructive on this point. *In re Williams*, 144 F.3d 544 (7th Cir. 1998). In that case, the Seventh Circuit found that a bankruptcy court did not abuse its discretion by modifying the automatic stay to permit state court action to determine the debtor's interest in a lease and therefore determine "whether the lease had any value that could be assumed under her plan," reasoned that "had the bankruptcy court not modified the stay so that the forcible entry case could go forward, likely it would then have to determine the merits to her right of possession." *Id.* at 550. The bankruptcy court had "no particular expertise under this narrow area of state law," so determining the merits of the debtor's right to possession "would not be a particularly efficient use of judicial resources." The court therefore concluded that the bankruptcy court did not abuse its discretion in lifting the stay because, among other things, "in a case like this all roads lead to the state court" and that "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.* Just as in *Williams*, the Non-U.S. Law Customer Issues will need to be decided and, as in *Williams*, requiring this Court to wrestle with unsettled issues of foreign law "would not be a particularly efficient use of judicial resources." *Id*. Here, "all roads lead to" an English-law governed court – and what better than the Bahamas Court, where these issues are already front and center and where both parties can fully participate and be heard. *Id.* And, indeed, just as in *Williams*, "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.*

numbers on an investor basis, we have it on a customer basis. But you're talking about less than a couple hundred.")

NOTICE

89. The JPLs will provide notice of this Motion to the following parties: (i) counsel to the U.S. Debtors; (ii) Office of the United States Trustee for the District of Delaware; (iii) counsel to the Official Committee of Unsecured Creditors in the Chapter 11 Cases; and (iv) all parties entitled to notice of this Motion pursuant to Bankruptcy Rule 2002 and Local Rule 4001-1(a). The JPLs submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

90. No previous request for the requested relief has been made to this or any other Court.

CONCLUSION

WHEREFORE, for the reasons stated above, the JPLs ask the Court to enter the Order, substantially in the form attached hereto as **Exhibit 1**.

[*Remainder of page intentionally left blank.*]

Dated: March 29, 2023

/s/ *Kevin Gross*

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20 Defendants.	Adv. Pro. No. 23-50145 (JTD)

AMENDED COMPLAINT

Plaintiff-Debtors Alameda Research LLC ("Alameda Research"), Alameda Research Ltd., FTX Trading Limited ("FTX Trading"), West Realm Shires, Inc., West Realm Shires Services, Inc. (a/k/a, FTX US and "FTX US"; collectively, "Plaintiffs" or "Debtors"), which have each filed a bankruptcy petition in the above-captioned bankruptcy cases, submit this

[1] The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification number are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson's Commercial Complex, Friars Hill Road, St. John's, Antigua and Barbuda.

amended complaint (the "Amended Complaint") against FTX Digital Markets Ltd. ("FTX DM"), Brian C. Simms, Kevin G. Cambridge, and Peter Greaves, in their capacity as the joint provisional liquidators of FTX DM (collectively, the "Joint Provisional Liquidators" or "JPLs"), and certain currently unidentified individuals or entities identified for the time being as J. Does 1–20 who have either directed and/or aided and abetted the actions of FTX DM or others in the formation of FTX DM, (the "Does"; together with FTX DM and the JPLs, the "Defendants") and allege the following based upon personal knowledge as to themselves and their acts based upon their investigation to date, and upon information and belief as to all other matters.

NATURE OF THE CASE

1. This adversary proceeding (the "Adversary Proceeding") is brought to permit this Court to resolve disputes arising from the JPLs' assertions, on behalf of FTX DM, that FTX DM owns billions of dollars in assets controlled by the Debtors and which they intend to distribute to creditors through a plan of reorganization to be confirmed by this Court. This Adversary Proceeding also seeks to resolve the JPLs' flawed claims to contractual rights against the Debtors' customers and to beneficial ownership of cash and cryptocurrency only nominally held by FTX DM. Resolution of the issues presented in this Adversary Complaint will establish that FTX DM has no meaningful claims to any property—under the control of the Debtors or under the control of FTX DM—further clearing the path to confirmation of a plan of reorganization.

2. The claims asserted in the Amended Complaint are brought by Plaintiffs pursuant to sections 541, 544, 548, 550, and 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), the Declaratory Judgment Act, 28 U.S.C. § 2201, and sections 1304 and 1305 of Delaware Code title 6, in response to serial threats by the JPLs to attempt to relocate these global bankruptcy cases (the "Chapter 11 Cases") to The Bahamas. The Debtors seek only declaratory relief from this Court. The Debtors are not currently seeking recognition of

such relief in The Bahamas and do not believe that recognition in The Bahamas will be required for confirmation of a plan of reorganization. This Court has already determined that it will not defer to any other court on the question of what constitutes assets of the Debtors in these Chapter 11 Cases.

3. The JPLs claim that FTX DM (a non-Debtor) is the constructive owner of FTX.com's property, including fiat and cryptocurrency, intellectual property, and customer relationships, as a matter of non-bankruptcy law.

4. FTX DM did not succeed to *any* property owned by FTX.com. Yet the JPLs' assertions have continued to balloon in size and volume (though never attaining substance), with the JPLs making public statements, statements to third parties outside of The Bahamas, statements to government officials outside of The Bahamas, and filings in this Court—all asserting that FTX DM is somehow the owner of the entire FTX.com exchange. In their February 8, 2023 First Interim Report filed with The Bahamas court overseeing the FTX DM provisional liquidation (the "Bahamas Court"), the JPLs misleadingly asserted with no evidence that FTX DM owns or at least has a license to the FTX.com intellectual property, that customers were "migrated" from FTX Trading to FTX DM, and that FTX DM has $7.7 billion in receivables from the Debtors. More recently, the JPLs have threatened avoidance actions against even direct recipients of preferential payments made by Debtor Alameda Trading Ltd.

5. Without this Court's prompt intervention, the JPLs—fiduciaries with no constituency but themselves—will continue to assert baseless claims that will harm FTX.com customers and all other creditors of the FTX Debtors. In this Adversary Proceeding, the Debtors seek a declaratory judgment that FTX DM has no ownership interest in any of the Debtors' property, cash or cryptocurrency held by FTX DM, or the customer relationship with FTX.com

customers. Furthermore, to the extent FTX DM is determined to own any assets held or claimed by the Debtors, the transactions (and all documents and structures supporting such transactions) that Samuel Bankman-Fried and his co-conspirators used in an attempt to hide assets behind the veil of FTX DM are avoidable as fraudulent transfers under sections 544, 548, and 550 of the Bankruptcy Code, and sections 1304 and 1305 of Delaware Code title 6. If the FTX Debtors succeed in this Adversary Proceeding, there will be no material property of FTX DM for local proceedings in The Bahamas to resolve.

6. The JPLs' claims to ownership of FTX.com's property are based largely on constructive, equitable, and other *non-documentary* arguments that depend upon the false premise that FTX DM was the center of the FTX Group.[2] Nothing could be further from the truth. FTX DM was no more than a short-lived provider of limited "match-making" services for customer-to-customer transactions, on the cryptocurrency exchange built, owned, and operated by Debtor FTX Trading, its immediate corporate parent. Over 90% of customers who used the FTX.com exchange were customers before FTX DM even became operational in May 2022 and, once operational, FTX DM never earned a dollar of third-party revenue. FTX DM was an economic nullity within the FTX Group.

7. FTX DM was a legal nullity as well. The peculiar history of FTX DM is a classic example of abuse of the corporate form. It was created as a front to facilitate a conspiracy to defraud the Debtors' customers—a conspiracy to which three individuals have already pled guilty and for which a fourth, Mr. Bankman-Fried, is under indictment—rendering any and all

[2] As set forth in the Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings (the "Declaration") [Ch. 11 D.I. 24], the Debtors' affairs are comprised broadly of four groups of business, also known as "silos." [*Id.* at ¶¶ 9–10.] The Debtors refer collectively to all four silos as the "FTX Group". [*Id.*] As used in this Amended Complaint, the term "FTX Group" has only the meaning set forth in the Declaration.

transactions related to FTX DM avoidable. FTX DM was part of the mature phase of that conspiracy. It was formed and functioned as an offshore haven for a continuous fraudulent scheme, as well as a conduit through which the fruits of that fraudulent scheme could be channeled to insiders and third parties outside of the reach of any independent and effective regulatory authority. Fortunately, Mr. Bankman-Fried and his cohorts were unable to spirit away *all* of the Debtors' property, both practically and as a matter of law, because these Chapter 11 Cases were commenced and Mr. Bankman-Fried and his Bahamian supporters lost the first stage of what Mr. Bankman-Fried described as the "jurisdictional battle vs. Delaware." [Ch. 11 D.I. 24 ¶ 76.] Mr. Bankman-Fried can no longer fight that battle now that the U.S. District Court for the Southern District of New York has imposed strict pretrial release conditions upon him.

8. The JPLs inherited the corporate shell that Mr. Bankman-Fried and his co-conspirators built to harbor their fraudulent enterprise in The Bahamas and have used it to continue the jurisdictional battle. In doing so, the JPLs continue to cast confusion over the true ownership of the Debtors' property and waste the Debtors' assets in the process. Every dollar spent on this dispute is one less dollar available for distribution to the creditors with claims against the FTX.com exchange. Most recently, the JPLs insisted on seeking to file in The Bahamas an application that sought "binding directions and declarations" from the Bahamas Court that the FTX Debtors and their global stakeholders do not own core assets—in advance of this Court deciding the same issues. This Court rejected that attempt, and has made clear it will decide what constitutes assets of the Debtors in the Chapter 11 Cases. This Amended Complaint seeks a prompt merits determination from this Court as to ownership of the disputed assets.

JURISDICTION AND VENUE

9. This Adversary Proceeding relates to Plaintiffs' Chapter 11 Cases filed with this Court on November 11 and 14, 2022 (the "Petition Date").[3]

10. Plaintiffs submit this Amended Complaint pursuant to Rules 7001(2), 7001(9) and 7015 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), sections 541, 544, 548 and 105(a) of the Bankruptcy Code, sections 1304 and 1305 of Delaware Code title 6, and the Court's Order entered on May 23, 2023. [D.I. 11.] Declaratory relief is appropriate pursuant to Bankruptcy Rule 7001(9) and the Declaratory Judgment Act, 28 U.S.C. § 2201.

11. This Adversary Proceeding is a "core" proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B), (O) and (P).

12. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012.

13. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409, and venue in this Court is consistent with the interests of justice, judicial economy, and fairness. Courts typically defer to a plaintiff's choice of forum. In addition, this Adversary Proceeding asserts claims by Plaintiffs as debtors-in-possession in a chapter 11 proceeding, and therefore should be heard by the Bankruptcy Court overseeing its chapter 11 proceedings. This Court's extensive familiarity with the facts and background of these Chapter 11 Cases, and with the Chapter 15

[3] November 11, 2022 is the Petition Date for all of the above-captioned debtors and debtors-in-possession, except for Debtor West Realm Shires Inc., whose Petition Date is November 14, 2022.

proceeding filed by FTX DM in this Court, supports this Court adjudicating this action. Accordingly, Plaintiff submits that this Court is the proper venue for this Adversary Proceeding.

14. Pursuant to rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), Plaintiff consents to the entry of a final order or judgment by the Court on these claims to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PARTIES

15. Plaintiffs in this case are Debtors Alameda Research, Alameda Research Ltd., FTX US, West Realm Shires, Inc., and FTX Trading, all of which are debtors-in-possession in the above-captioned jointly administered Chapter 11 Cases. Plaintiffs Alameda Research, West Realm Shires, Inc., and FTX US are incorporated under Delaware law. Plaintiff Alameda Research Ltd. is incorporated under the law of the British Virgin Islands. Plaintiff FTX Trading is incorporated under the law of Antigua and Barbuda.

16. No trustee has been appointed for Plaintiffs in the Chapter 11 Cases and Plaintiffs continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. Accordingly, Plaintiffs have the authority to file this Amended Complaint commencing, and thereafter to prosecute, this Adversary Proceeding.

17. Defendant FTX DM is an international business company incorporated in the Commonwealth of The Bahamas, which operated for a short period of time as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (the "DARE Act") as amended, Statute Laws of The Bahamas. The principal address and office for FTX DM is Building 27, Veridian Corporate Centre West Bay Street, Nassau, N.P.

18. The Defendant JPLs were appointed as joint provisional liquidators pursuant to a Petition for Winding Up Order application by the Securities Commission of The Bahamas and an Order for Appointment of Provisional Liquidator issued on November 10, 2022 by the Commercial Division of the Supreme Court of the Commonwealth of The Bahamas.

19. Acting on behalf of FTX DM, the JPLs filed a Chapter 15 Petition for Recognition of a Foreign Proceeding on November 15, 2023. *In re FTX Digital Markets Ltd.*, No. 22-11217 (Bankr. D. Del) ("Chapter 15") D.I. 1 (the "Chapter 15 Petition") ¶ 47. This Court granted the Chapter 15 Petition on February 15, 2023, finding that it had jurisdiction over the Petition and the Defendants.

20. Defendants J. Does 1–20 are certain currently unidentified individuals or entities who have either directed and/or aided and abetted the actions of FTX DM or others in the formation of FTX DM. Plaintiffs reserve the right to amend this Amended Complaint to specify the identities of J. Does 1–20 as they become identified.

FACTUAL BACKGROUND

A. The FTX Entities Are Founded

21. Mr. Bankman-Fried and Zixiao "Gary" Wang founded Alameda Research in November 2017. Mr. Bankman-Fried, Mr. Wang, and Nishad Singh founded FTX Trading (a/k/a FTX.com) in April 2019 and West Realm Shires, Inc. and FTX US in January 2020. Caroline Ellison became co-CEO of Alameda Research in 2021, and the sole CEO of Alameda Research upon the resignation of Samuel Trabucco in August 2022. Ms. Ellison's employment was terminated in November 2022.

22. Upon its creation in April 2019, FTX Trading operated an exchange and trading platform which allowed customers to buy, sell, exchange, hold, or otherwise transact in

digital assets, use the FTX Application Programming Interface (the "API"), and use any other services through the FTX.com website (the "Site").

23. FTX DM existed as a corporate entity for just over 16 months. It was incorporated in the Commonwealth of The Bahamas ("The Bahamas") on July 22, 2021. Its registration to operate as a Digital Asset Service Provider (but not a Digital Token Exchange) was approved by the Securities Commission of The Bahamas (the "Commission") on September 20, 2021. FTX DM began operations on May 13, 2022 and operated for just under six months, from May 13, 2022 to November 10, 2022. As explained below, FTX DM's entire existence fell within the scope of the criminal conspiracy, to which Mr. Bankman-Fried's co-conspirators have already pled guilty. Indeed, its very formation and existence was in furtherance of that conspiracy.

B. The Co-Conspirators Begin to Use the FTX Entities to Perpetrate Fraud

24. From at least 2019 and through November 2022, Mr. Bankman-Fried, Mr. Wang, Mr. Singh, and Ms. Ellison (the "Co-Conspirators"), variously used Alameda Research, FTX Trading, and FTX DM to engage in a colossal criminal conspiracy. The aim of much of this improper activity was to use funds from various other FTX entities to prop up Alameda Research, which sustained billions of dollars in trading losses under Ms. Ellison's and Mr. Bankman-Fried's direction.

- As he admitted by guilty plea, from at least in or about 2019 and through November 2022, Mr. Wang conspired to and actually did defraud the customers of FTX Trading by misappropriating customers' deposits and lending customers' deposits to Alameda Research, conspired to commit commodities fraud by implementing changes to the code of FTX.com to permit Alameda Research to incur a negative balance on FTX.com, and conspired to commit securities fraud by lying to investors regarding FTX Trading's financial condition. Information & Waiver of Indictment, *United States* v. *Wang*, No. 22-cr-00673 (LAK) (S.D.N.Y. Dec. 19, 2022), ECF Nos. 6–7.

- As he admitted by guilty plea, from at least in or about 2019 and through November 2022, Mr. Singh conspired to and actually did defraud the customers of FTX Trading by misappropriating customers' deposits and lending customers' deposits to Alameda Research, conspired to commit commodities fraud by misappropriating their FTX Trading's customers' deposits, conspired to commit securities fraud by lying to investors about FTX Trading's financial condition and the relationship between FTX Trading and Alameda Research, conspired to commit money laundering, and conspired to make unlawful political contributions and to defraud the Federal Election Commission (the "FEC"). Superseding Information & Waiver of Indictment, *United States* v. *Singh*, No. 22-cr-00673 (LAK) (S.D.N.Y. Feb. 28, 2023), ECF Nos. 90–91.

- As she admitted by guilty plea, from at least in or about 2019 and through November 2022, Ms. Ellison conspired to and actually did defraud the customers of FTX Trading by misappropriating customers' deposits and lending customers' deposits to Alameda Research, conspired to and actually did defraud lenders regarding Alameda Research's financial condition, conspired to commit commodities fraud by misappropriating customers' deposits, conspired to commit securities fraud by lying to investors regarding FTX Trading's financial condition, and conspired to commit money laundering. Information & Waiver of Indictment, *United States* v. *Ellison*, No. 22-cr-00673 (LAK) (S.D.N.Y. Dec. 19, 2022), ECF Nos. 8–9.

- As alleged in a pending superseding indictment, for the period beginning at least in or about 2019 and running through November 2022, Mr. Bankman-Fried conspired to and actually did commit wire fraud, conspired to and actually did defraud FTX Trading customers, conspired to and actually did commit securities fraud on FTX Trading investors, conspired to and actually did commit fraud on Alameda Research's lenders, conspired to and actually did commit bank fraud, conspired to operate an unlicensed money transmitting business, conspired to commit money laundering, and conspired to make unlawful political contributions and to defraud the FEC. Superseding Indictment, *United States* v. *Bankman-Fried*, No. 22-cr-00673 (LAK) (S.D.N.Y. Feb. 23, 2023), ECF No. 80.

25. In addition to committing fraud to directly sustain Alameda Research, Mr. Bankman-Fried (and/or others acting at his direction) used FTX DM as the centerpiece of a fraudulent scheme ancillary to the first, this one to funnel FTX Trading customer deposits and other valuable property and rights to The Bahamas, out of the reach of American regulators and courts.

26. Mr. Bankman-Fried, and others at his direction, maintained a close, accommodating relationship with Bahamian law enforcement agencies, including, among others, the Commission, and with the Attorney General and Prime Minister of The Bahamas. Indeed, Mr. Bankman-Fried aimed to leverage that relationship to minimize his criminal and civil exposure should the massive fraud be discovered.

27. To accomplish the fraudulent scheme, Mr. Bankman-Fried (and/or others acting at his direction) planned to transfer property and rights from FTX Trading to FTX DM, ostensibly regulated by The Bahamas. At no time were the Co-Conspirators authorized to do so by the law of any jurisdiction or the corporate charters of either FTX Trading or FTX DM.

28. For example, after founding FTX DM, Mr. Bankman-Fried (and/or others acting at his direction) transferred approximately $143 million of fiat currency belonging to FTX Trading and Alameda into accounts in FTX DM's name at Farmington State Bank (d/b/a Moonstone Bank, "Moonstone") and Silvergate Bank ("Silvergate"). Mr. Bankman-Fried and those acting on his behalf obtained no reasonably equivalent value for FTX Trading or Alameda in exchange for these transfers. And the transfer of such a significant sum to a shell entity was not within the ordinary course of business for FTX Trading or Alameda. The true purpose of the transfers were to defraud creditors of FTX or Alameda and to benefit insiders, including the Co-Conspirators themselves.

29. In additional furtherance of the scheme, in May 2022, Mr. Bankman-Fried (and/or others acting at his direction) secretly introduced new terms of service (*see infra*, ¶¶ 38–42), without altering the front page of the document that FTX Trading's customers reviewed on a click-through basis (if at all) or otherwise distinguishing the new terms from the old. Those new terms of service altered the annexed schedules to allegedly give FTX DM a role as a "service

provider" in the day-to-day operations of FTX Trading. But at no point in this scheme did FTX DM ever provide services for FTX Trading commensurate with the magnitude of the Co-Conspirators' transfers on its behalf.

30. When FTX DM was created, and at all times since, Mr. Bankman-Fried (and/or others acting at his direction) knew or should have known that Alameda and FTX Trading were not solvent and, nevertheless, made the transfers with the intent to avoid U.S. regulators and to remove assets from the reach of their creditors in the event of inevitable bankruptcy proceedings.

31. The Co-Conspirators were unable to implement their ancillary fraudulent scheme before the Debtors and FTX DM entered bankruptcy and liquidation, respectively.

C. The FTX Entities Enter Bankruptcy

32. On November 10, 2022, the Commission filed a petition for provisional liquidation of FTX DM with the Supreme Court of The Bahamas. The Bahamian Court granted the petition and appointed Brian Simms as the provisional liquidator. On November 14, 2022, the Bahamian Court entered an order appointing Kevin G. Cambridge and Peter Greaves as additional liquidators. Collectively, Simms, Cambridge, and Greaves are the JPLs.

D. FTX DM and the JPLs Begin Wrongfully Claiming the Debtors' Property

33. From the moment of their appointment, the JPLs have repeatedly claimed their ownership of the Debtors' property and have attempted to relocate these proceedings to The Bahamas. Indeed, on November 15, 2022, the JPLs filed the Chapter 15 Petition that incorrectly averred, among other things, that FTX DM's "creditors include all account holders with assets stored in the exchange's custodial wallets." [Ch. 15 D.I. 1 at ¶ 47.] Moreover, in his declaration in support of the Chapter 15 Petition, Brian Simms averred that "the FTX network of companies that established the FTX Brand (the "FTX Brand"), . . . were managed and operated by FTX

Digital [Markets] in The Bahamas . . . ," and that "[d]espite the seemingly complex structure of the FTX Brand companies, the entire FTX Brand was ultimately operated from a single location: The Bahamas." [Ch. 15 D.I. 2 at ¶¶ 33, 37.]

34. Since then, the JPLs have continued to assert those same baseless claims to the Debtors' property in the following filings and their accompanying declarations:

- An emergency motion for provisional relief filed on November 16, 2022. [Ch. 15 D.I. 7.]
- A *second* emergency motion for provisional relief, sought before obtaining a ruling on the first, filed on December 9, 2022. [Ch. 15 D.I. 27.]
- A motion to dismiss the chapter 11 case of FTX Property Holdings, filed on December 12, 2022. [Ch. 11 D.I. 213.]
- A *third* motion for provisional relief filed on December 23, 2022. [Ch. 15 D.I. 55.]

35. The JPLs then asserted at their chapter 15 recognition hearing that billions of dollars held by the Debtors in the United States were the property of FTX DM. [Ch. 15 D.I. 103.]

36. In their February 8, 2023 First Interim Report filed with the Bahamas Court, the JPLs asserted with no evidence that FTX DM owns or at least has a license to the FTX.com intellectual property, that customers were migrated from FTX Trading to FTX DM, that FTX DM has $7.7 billion in receivables from the Debtors, and that FTX DM provided services constituting a considerable portion of the total transaction volume on FTX.com.

E. FTX DM Never Obtained Claims or Interests in the Debtors' Property

37. Despite the JPLs' baseless assertions, FTX DM never obtained claims or interests in the Debtors' property.

i. FTX DM Had No Interests Under the Original FTX Trading Terms of Service

38. The JPLs' central—and mistaken—theory is that the Co-Conspirators' efforts to transfer the property of Debtor FTX Trading to FTX DM, including by introducing new terms of service, in fact effectuated a transfer of that property. That theory is fatally flawed; neither the new terms nor any other action in fact effectuated a transfer of FTX Trading property or the FTX Trading customer relationships to FTX DM.

39. The relationship between customers and FTX Trading was governed by the 2019 and 2020 Terms of Service (the "Original Terms of Service"), and later by the Terms of Service dated May 13, 2022 (the "New Terms of Service"). Under both the Original Terms of Service and the New Terms of Service, the customer relationship was solely between FTX Trading and the customer.

40. The Original Terms of Service and other records identified by the Debtors during their ongoing investigation demonstrate that:

- The Debtors own, and for all relevant periods has owned, the API.
- The Debtors own, and for all relevant periods has owned, the Site.
- At all times, through and including the present date, all customer accounts for the Site were maintained in the AWS cloud environment, which was managed by the Debtors.
- At all times, through and including the present date, all fee income generated by customers using the Site (other than those for FTX Japan and Singapore) was paid to FTX Trading.
- No customer that opened an account on the Site prior to May 13, 2022 ever had a relationship with FTX DM, whether contractual, service, or otherwise.
- No customer that opened an account on the Site prior to May 13, 2022 ever effectively transferred or novated any part of its contractual relationship with FTX Trading to FTX DM.

- During calendar year 2021, FTX Trading generated over $1 billion in third-party revenue.
- During the first three quarters of 2022, FTX Trading generated over $700 million in third-party revenue.

ii. FTX DM Obtained No Interests Under the New FTX Trading Terms of Service

41. During its six-month operational lifespan, FTX DM had a limited mandate and a limited balance sheet, merely providing certain "Specified Services" as a "Service Provider" under the New Terms of Service. At all times during FTX DM's lifespan, FTX Trading continued to own and operate the FTX.com exchange.

42. To that end, the New Terms of Service demonstrate that FTX Trading is and was the *sole* custodian of funds provided by customers and the *sole* issuer and redeemer of e-money (*i.e.*, converted fiat currency deposited by customers) on FTX.com. FTX Trading was the *sole* custodian of cryptocurrency. Under those terms, FTX DM never obtained any interests in the underlying property.

43. The New Terms of Service demonstrate the following:

- FTX Trading was the sole owner and operator of the FTX.com exchange.
- FTX Trading is the named counterparty to the New Terms of Service, just as it was for the Original Terms of Service.
- FTX Trading was therefore in privity of contract with every customer. The New Terms of Service never transferred or novated the Original Terms of Service to FTX DM.
- In fact, FTX DM did not exist, or was not licensed to conduct business, for those customers who signed the Original Terms of Service.
- Under the New Terms of Service, FTX DM is not the named party, but is identified as one of several "Service Providers" that provides "Specified Services."
- Section 1.3 and the Service Schedules of the New Terms of Service explain that the "Specified Services" to be provided by FTX DM all involve

providing technology to facilitate certain transactions on the FTX.com platform "*with other users*." The Specified Services did not include trading as principal or entering into privity of contract with any customer with respect to any trade.

- Section 8.3 of the New Terms of Service expressly contemplates bilateral transactions between *FTX Trading* and each customer with respect to transactions in fiat currency.

- Likewise, Section 8.3.2 of the New Terms of Service provides for a transaction directly between *FTX Trading* and the customer with respect to the issuance of e-money in return for fiat currency, and Section 8.3.7 of the New Terms of Service provides for a transaction directly between *FTX Trading* and the customer with respect to the redemption of e-money in return for fiat currency. These transactions are not Specified Services; indeed, they are not match-making functions at all, but direct transactions between FTX Trading and the customer.

- The receipt and custody of fiat currency and issuance and redemption of e-money are not Specified Services, necessarily excluding FTX DM from inclusion as a party to those terms.

44. Additionally, the Debtors' review of other records from their ongoing investigation demonstrates the following:

- FTX DM is 100% owned by FTX Trading.

- FTX DM was licensed by the Commission as a Digital Assets Service Provider ("DASP") under section 6(d) of the DARE Act, and not as a Digital Token Exchange ("DTO"), under section 6(a) of the DARE Act.

- As a DASP, FTX DM was not in the business of providing, and not authorized to provide, distinct custodial services.

- $10 million was deposited into an account in FTX DM's name with Fidelity Bank and Trust (Bahamas) Limited ("Fidelity Bahamas"), which sum represented the estimated cost of an orderly wind-down of FTX DM's business over a six-month period.

- The $10 million deposited in FTX DM's name with Fidelity Bahamas was provided by FTX Trading.

- All FTX.com accounts opened after May 13, 2022 that held digital assets or e-money were maintained in the AWS cloud environment of which Alameda Research was the account owner, not FTX DM.

- The AWS cloud environment was and is located outside of The Bahamas.

- All transactional fees earned under the New Terms of Service were paid to FTX Trading.

- FTX DM earned approximately $600,000 net income during calendar year 2021 and approximately $5.17 million net income through the first three quarters of 2022.

- In the first three quarters of 2022, FTX DM had total operating expenses of approximately $73 million, including over $40 million labeled "other expenses." [Ch.11 D.I. 337 Exs. E, F.] These "other expenses" include over $15 million for "Hotels and Accommodation" paid primarily to three hotels in The Bahamas: the Albany ($5.8 million), the Grand Hyatt ($3.6 million), and the Rosewood ($807,000). [Ch. 11 D.I. 337 ¶ 17.]

45. FTX DM never generated revenue from third parties or customers, and only received intercompany or related-party revenue paid to it primarily by FTX Trading, as well as other Debtors:

- According to the Debtors' review of financial records from their ongoing investigation, approximately $18.7 billion of cash—including funds from customers, Alameda Research, entities owned by Alameda Research, and FTX Trading—was transferred to FTX DM from January to November 2022. FTX DM transferred out $17.8 billion to customers, Alameda Research, entities owned by Alameda Research, and FTX Trading over the same period, accounting for over 95% of all the cash to ever pass through it.

- As a result, the Debtors cannot account for approximately $800 million in funds transferred to FTX DM from customers and/or the various Debtors.

46. Under both the Original and New Terms of Service, *only* FTX Trading was listed on the first page that customers would have viewed—and *only* FTX Trading was the contractual counterparty facing any customers or entering into any transactions with any customer to receive or return cash.

47. FTX DM acted as a mere "go-between" or pass-through agent for FTX Trading. FTX DM's activity was generally correlated with that of FTX Trading. For example:

- The Debtors' review of financial records from their ongoing investigation indicates that $5.6 billion in transfers from FTX DM to FTX Trading were recorded with offsetting entries to "for the benefit of" liability accounts. These accounts were historically used by FTX Trading to record movement of customer funds onto and off of FTX.com. In other words, FTX DM moved money to FTX Trading in order for *FTX Trading* to transact with customers who made withdrawals.

- For over 80% of the days on which FTX DM transferred money to FTX Trading, there were outflows on the FTX.com exchange exceeding the amounts of the transfers. It appears that FTX Trading, or other Debtor entities, funded the deficiencies. In other words, transfers from FTX DM almost never fully satisfied customer withdrawals from FTX.com.

48. Neither FTX DM nor any other subsidiary ever exercised ownership or control over any currency on the FTX Trading Site.

49. In early 2022, Mr. Bankman-Fried, Mr. Wang, Mr. Singh, and certain others (the "Executive Employees") each signed offers of employment with FTX DM. Each of the Executive Employees also executed an Invention Assignment Agreement, which was affixed to their offers of employment. The Invention Assignment Agreement defines "Company" as "FTX Digital Markets Ltd" and "FTX" as "FTX Trading Limited, an entity organized under the laws of Antigua and Barbuda."

50. The Invention Assignment Agreement provides, in pertinent part:

> **Relationship to FTX Trading.** I understand that all Inventions and other work product that I develop are being developed by the Company for FTX. Accordingly, I consent to the assignment of all such works by the Company to FTX, and I understand and acknowledge that ***FTX is the owner of all of the Inventions or other intellectual property created by me in my course of employment***. I further understand that FTX is a third party beneficiary to this Agreement and has the full right to directly enforce any rights of the Company under this Agreement. (emphasis added).

51. Indeed, it was standard practice for all offers of employment at FTX DM to append an Invention Assignment Agreement. When signing any such offers of employment at

FTX DM, employees expressly agreed to and acknowledged FTX Trading's ownership of all intellectual property and inventions created while they were employed by FTX DM.

52. Moreover, all intellectual property used by the Debtors and FTX DM, including the unique codebase and intellectual property used to create services and the user interface for FTX.com, was owned by the Debtors. For example:

- On April 15, 2019, FTX Trading contracted with Cottonwood Grove Ltd., a Debtor entity wholly owned by Alameda Research, to perpetually license software created by Cottonwood Grove Ltd. implementing the Site, including software relating to collateral accounts, order-book matching, automated settlement, an automated insurance fund, backup liquidity implementation, auto-deleveraging, leveraged token creations and redemptions, an over-the-counter trading portal, and a graphical user interface with technical trading tools.

- On April 16, 2019, FTX Trading subcontracted "certain research, design, development, and other related services" to Alameda Research. Alameda Research thereby transferred and assigned its intellectual property rights and interests to FTX Trading.

- On January 1, 2020, FTX Trading contracted with Cottonwood Grove Ltd. to procure "certain research, design, development, and other related services." Cottonwood Grove Ltd. thereby transferred and assigned its intellectual property rights and interests to FTX Trading.

53. Neither Cottonwood Grove Ltd., Alameda Research nor FTX Trading contracted with FTX DM to transfer, assign, or license any of their intellectual property rights and interests to FTX DM. Furthermore, the terms of the FTX Trading agreement with Cottonwood Grove Ltd. is not assignable or transferrable by contract or operation of law, and provides that there are no third party beneficiaries to the agreement. FTX DM could not and did not have any rights under the FTX Trading agreement with Cottonwood Grove Ltd.

54. Accordingly, any intellectual property regarding the API or the Site belonged to Debtors Alameda Research or FTX Trading Ltd., and never to FTX DM.

55. The design of the FTX.com trading system, the Original and New Terms of Service, and the Debtors' investigation to date of FTX DM demonstrate that FTX DM was never more than a mere interchangeable sub-custodian or agent for FTX Trading. It never acquired an interest in any underlying property.

iii. Even If There Were Transfer or Novation, Any and All Transfers of Property Undertaken to FTX DM Are Avoidable

56. As alleged in the indictment of Mr. Bankman-Fried, "from at least in or about 2019, up to and including in or about November 2022," FTX Trading and Alameda Research co-founder Sam Bankman-Fried "corrupted the operations of the cryptocurrency companies he founded and controlled . . . through a pattern of fraudulent schemes . . . ." Superseding Indictment ¶ 1, *United States* v. *Bankman-Fried*, No. 22-cr-00673 (LAK) (S.D.N.Y. Feb. 23, 2023), ECF No. 80.

57. In particular, "this multi-billion-dollar fraud" was executed "through a series of systems and schemes that allowed" Mr. Bankman-Fried, "through Alameda, to access and steal FTX customer deposits without detection." *Id.* ¶ 4.

58. For example, the Site's software generally did not allow for an account on the exchange to carry a negative balance. However, in or late July 2019, Mr. Bankman-Fried directed one or more Co-Conspirators or individuals working at their behest to modify the Site's software to permit Alameda Research to maintain a negative balance in its account on the exchange. Specifically, the Co-Conspirators or their agents modified settings in the exchange software known as "*borrow*," "*can_withdraw_below_borrow*," and "*allow_negative*."

59. As a result of the modifications made at Mr. Bankman-Fried's direction to these settings, Alameda Research was not required to collateralize its position on the Site and was able to maintain a negative balance on the Site. These modifications permitted Alameda Research

to utilize the Site to trade and withdraw assets without limit, giving it a "line of credit" collateralized by the customer deposits on the Site.

60. As of the petition date, Mr. Bankman-Fried, the Co-Conspirators, or individuals working at their behest had tampered with the Site's software to an extent sufficient to expand Alameda Research's "line of credit" to $65 billion.

61. Mr. Bankman-Fried and the Co-Conspirators freely drew on Alameda Research's "line of credit" to facilitate the next phase of their criminal scheme: absconding to The Bahamas.

62. As set forth above, Mr. Bankman-Fried and his agents devised the New Terms of Service, among other things, in furtherance of this scheme. In doing so, they intended, at least in part, to facilitate the transfer of FTX Trading and Alameda Research property to FTX DM to hinder, delay, or defraud its creditors. They had no power to do so under their operative corporate charters or under any law.

63. Further, any transfer of FTX Trading and Alameda Research property to or through FTX DM by the Co-Conspirators, whether attempted or actually consummated, was fraudulent because it was not made in exchange for *any* value, let alone *reasonably equivalent* value.

64. At all relevant times since 2019, Mr. Bankman-Fried and the Co-Conspirators had personal knowledge and/or documentation confirming that the transfers of FTX Trading and Alameda Research property to or through FTX DM were made or attempted while FTX Trading and Alameda Research were already insolvent and for the sole purpose of avoiding and/or frustrating independent regulatory oversight and hindering repayment of the FTX Group's creditors. In particular, Mr. Bankman-Fried and the Co-Conspirators were aware that Alameda

Research owed $9 billion or more to FTX Trading, borrowed against customer deposits that Alameda Research had no hope of repaying.

65. However, once the Debtors filed the Chapter 11 Cases, Mr. Bankman-Fried and the other Co-Conspirators were replaced by management with no personal knowledge of the circumstances under which the transfers of FTX Trading and Alameda Research property to or through FTX DM were made or attempted.

CAUSES OF ACTION

COUNT I
DECLARATORY JUDGMENT THAT FTX DM HAS NO OWNERSHIP INTEREST IN THE DEBTORS' CRYPTOCURRENCY
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

66. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

67. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

68. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

69. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM, including with respect to cryptocurrency.

70. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

71. At no time was FTX DM the custodian of any cryptocurrency owned by or in the custody of Plaintiffs.

72. FTX DM has no ownership interest of any kind in any cryptocurrency owned by or in the custody of Plaintiffs.

73. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

74. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any cryptocurrency owned by or in the custody of Plaintiffs.

COUNT II
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' FIAT CURRENCY
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

75. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

76. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

77. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

78. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM, including with respect to fiat currency.

79. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

80. At no time was FTX DM the custodian of any fiat currency owned by or in the custody of Plaintiffs.

81. FTX DM has no ownership interest of any kind in any fiat currency owned by or in the custody of Plaintiffs.

82. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

83. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any fiat currency owned by or in the custody of Plaintiffs.

COUNT III
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' INTELLECTUAL PROPERTY
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

84. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

85. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

86. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

87. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM, including with respect to intellectual property.

88. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

89. FTX DM has no ownership interest of any kind in any intellectual property owned by or in the custody of Plaintiffs.

90. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

91. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in the intellectual property owned by or in the custody of Plaintiffs.

COUNT IV
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' CUSTOMER INFORMATION
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

92. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

93. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

94. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

95. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM, including with respect to the Debtors' customer information.

96. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

97. FTX DM has no ownership interest in any customer information owned by or in the custody of Plaintiffs.

98. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

99. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any customer information owned by or in the custody of Plaintiffs.

COUNT V
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' CUSTOMER RELATIONSHIPS
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

100. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

101. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

102. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

103. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM, including with respect to the Debtors' customer relationships under the New Terms of Service.

104. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

105. FTX DM has no ownership interest in any FTX.com customer relationship. FTX DM is not and has never been a trustee for any customer of FTX.com.

106. At all times FTX Trading is and has been the sole owner of all rights and interests concerning FTX.com customers, including under the New Terms of Service.

107. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

108. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any customer relationship of FTX.com customers.

COUNT VI
DECLARATORY JUDGMENT THAT FTX DM HOLD CASH AND CRYPTOCURRENTLY AS AGENT FOR THE DEBTORS
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

109. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

110. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

111. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

112. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM, including with respect to fiat currency and cryptocurrency.

113. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

114. FTX DM has no ownership interest in any fiat currency or cryptocurrency currently in its possession.

115. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

116. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind (other than bare legal title) in any fiat currency or cryptocurrency currently in its possession.

COUNT VII
IN THE ALTERNATIVE, ANY TRANSFERS TO OR THROUGH FTX DM WERE FRAUDULENT AND AVOIDABLE PURSUANT TO 11 U.S.C. §§ 544, 548(a)(1)(B) AND OTHER APPLICABLE LAW (AGAINST ALL DEFENDANTS)

117. The allegations in paragraphs 1 through 65 are adopted as if fully set forth herein.

118. This alternative claim for relief arises under 28 U.S.C. § 157(b), Bankruptcy Code sections 541, 544, 548(a)(1)(B), and 105(a), Bankruptcy Rules 7001(2) and (9), and sections 1304 and 1305 of Delaware Code title 6.

119. At all times, Mr. Bankman-Fried (and/or others acting at his direction) were without legal power or authority to transfer or attempt to transfer Plaintiffs' property, including contractual rights, to or through FTX DM.

120. The Plaintiffs did not receive reasonably equivalent value in exchange for the transfers of Plaintiffs' property to or through FTX DM by Plaintiffs. Indeed, Plaintiffs did not receive any discernable value or benefit in exchange for the transfers.

121. At all times, any transfers of Plaintiffs' property to or through FTX DM were made when Plaintiffs were insolvent. In the alternative, (i) the Plaintiffs became insolvent as a result of the transfers; (ii) Plaintiffs were caused by Mr. Bankman-Fried (and/or others acting at his direction) to engage in a business or a transaction for which they had unreasonably small capital; (iii) Plaintiffs were caused by Mr. Bankman-Fried (and/or others acting at his direction) to incur debts intended or believed to be beyond the Plaintiffs' ability to pay as such debts matured; or (iv) Plaintiffs were caused by the Co-Conspirators to undertake transfers for the benefit of insiders—including the Co-Conspirators themselves—outside of the ordinary course Plaintiffs' businesses.

122. Specifically, before, on, and after the dates of the transfers, the sum of Plaintiffs' debts exceeded the fair value of its assets, and the fair value of its assets was less than the amount required to pay its liabilities on existing debts as they became due. Indeed, the Plaintiffs knew, or should have known, that at the time of the transfers they could not reasonably satisfy their liabilities and indebtedness, as they matured or accrued, with either existing assets or with revenue they could reasonably generate as a going concern.

123. The transfers were made within two years of the Petition Date.

124. Based upon the foregoing, any transfers of Plaintiffs' property to or through FTX DM by the Co-Conspirators, and by any of the J. Doe Defendants, are avoidable as constructive fraudulent transfers.

COUNT VIII
IN THE ALTERNATIVE, ANY TRANSFERS TO OR THROUGH FTX DM WERE FRAUDULENT AND AVOIDABLE PURSUANT TO 11 U.S.C. §§ 544, 548(a)(1)(A) AND OTHER APPLICABLE LAW
(AGAINST ALL DEFENDANTS)

125. The allegations in paragraphs 1 through 65 and 120 through 123 are adopted as if fully set forth herein.

126. This alternative claim for relief arises under 28 U.S.C. § 157(b), Bankruptcy Code sections 541, 544, 548(a)(1)(A), and 105(a), Bankruptcy Rules 7001(2) and (9), and sections 1304 and1305 of Delaware Code title 6.

127. At all times, Mr. Bankman-Fried (and/or others acting at his direction) were without legal power or authority to transfer or attempt to transfer Plaintiffs' property, including contractual rights, to or through FTX DM.

128. At all times, any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction) were made or attempted with actual

intent to hinder, delay, or defraud Plaintiffs' creditors, as further demonstrated by, *inter alia*, the following indicia of fraud:

i. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were *not* for reasonably equivalent value in exchange from FTX DM;

ii. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, occurred while Plaintiffs' liabilities exceeded their assets and they were insolvent;

iii. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were made to or for the benefit of insiders—including the Co-Conspirators themselves;

iv. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were done in secret;

v. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were made outside of the ordinary course of business;

vi. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were made in order to facilitate and perpetuate fraud.

129. The transfers were made within two years of the Petition Date.

130. Accordingly, any transfers of Plaintiffs' property to or through FTX DM by the Co-Conspirators, and by any of the J. Doe Defendants, are avoidable as actual fraudulent transfers.

COUNT IX
RECOVERY OF ANY FRAUDULENT AND AVOIDABLE TRANSFERS PURSUANT TO 11 U.S.C. § 550
(AGAINST ALL DEFENDANTS)

131. The allegations in paragraphs 1 through 65 and 120 through 123 are adopted as if fully set forth herein.

132. Plaintiffs are entitled to avoid any fraudulent transfers pursuant to 11 U.S.C. § 548(a)(1) (collectively, the "Avoidable Transfers").

133. Defendant FTX DM was the initial transferee of the Avoidable Transfers and one or more of the J. Doe defendants may have been the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfers were made.

134. Pursuant to 11 U.S.C.§ 550(a), Plaintiffs are entitled to recover from Defendants the Avoidable Transfers, plus interest thereon to the date of payment and the costs of this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief against the Defendants:

1. A declaratory judgment that FTX DM has no ownership interest in the Debtors' cryptocurrency;

2. A declaratory judgment that FTX DM has no ownership interest in the Debtors' fiat currency;

3. A declaratory judgment that FTX DM has no ownership interest in the Debtors' intellectual property;

4. A declaratory judgment that FTX DM has no ownership interest in the Debtors' customer information;

5. A declaratory judgment that FTX DM has no ownership interest in the customer relationship with the customers of FTX.com;

6. A declaratory judgment that FTX DM has no ownership interest in the fiat currency or cryptocurrency in its possession;

7. A finding and order that any transfer or transfers of property or contractual rights to FTX DM are avoidable as fraudulent transfers, either actual or constructive; and

8. An order that Plaintiffs may recover any fraudulent transfers plus interest thereon to the date of payment, as well as the costs of this action.

Dated: June 14, 2023
Wilmington, Delaware

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Counsel for the Debtors
and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20, Defendants.	Adv. Pro. No. 23-50145 (JTD)
FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, Counterclaim Plaintiffs, -against- ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES INC., WEST REALM SHIRES SERVICES, INC., FTX PROPERTY HOLDINGS LTD., ALAMEDA AUS PTY LTD., ALAMEDA GLOBAL SERVICES LTD., ALAMEDA RESEARCH (BAHAMAS) LTD., ALAMEDA	

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Chapter 11 Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

RESEARCH HOLDINGS INC., ALAMEDA RESEARCH KK, ALAMEDA RESEARCH PTE LTD., ALAMEDA RESEARCH YANKARI LTD., ALAMEDA TR LTD., ALAMEDA TR SYSTEMS S. DE R. L., ALLSTON WAY LTD., ANALISYA PTE LTD., ATLANTIS TECHNOLOGY LTD., BANCROFT WAY LTD., BLOCKFOLIO, INC., BLUE RIDGE LTD., CARDINAL VENTURES LTD., CEDAR BAY LTD., CEDAR GROVE TECHNOLOGY SERVICES, LTD., CLIFTON BAY INVESTMENTS LLC, CLIFTON BAY INVESTMENTS LTD., COTTONWOOD GROVE LTD., COTTONWOOD TECHNOLOGIES LTD., CRYPTO BAHAMAS LLC, DAAG TRADING, DMCC, DECK TECHNOLOGIES HOLDINGS LLC, DECK TECHNOLOGIES INC., DEEP CREEK LTD., DIGITAL CUSTODY INC., EUCLID WAY LTD., FTX (GIBRALTAR) LTD., FTX CANADA INC., FTX CERTIFICATES GMBH, FTX CRYPTO SERVICES LTD., FTX DIGITAL ASSETS LLC, FTX DIGITAL HOLDINGS (SINGAPORE) PTE LTD., FTX EMEA LTD., FTX EQUITY RECORD HOLDINGS LTD., FTX EU LTD., FTX EUROPE AG, FTX EXCHANGE FZE, FTX HONG KONG LTD., FTX JAPAN HOLDINGS K.K., FTX JAPAN K.K., FTX JAPAN SERVICES KK, FTX LEND INC., FTX MARKETPLACE, INC., FTX PRODUCTS (SINGAPORE) PTE LTD., FTX SERVICES SOLUTIONS LTD., FTX STRUCTURED PRODUCTS AG, FTX SWITZERLAND GMBH, FTX TRADING GMBH, FTX US SERVICES, INC., FTX US TRADING, INC., FTX VENTURES LTD., FTX ZUMA LTD., GG TRADING TERMINAL LTD., GLOBAL COMPASS DYNAMICS LTD., GOOD LUCK GAMES, LLC, GOODMAN INVESTMENTS LTD., HANNAM GROUP INC., HAWAII DIGITAL ASSETS INC., HILLTOP TECHNOLOGY SERVICES LLC, HIVE EMPIRE TRADING PTY LTD., INNOVATIA LTD., ISLAND BAY VENTURES INC., KILLARNEY LAKE INVESTMENTS LTD., LEDGER HOLDINGS INC., LEDGERPRIME BITCOIN YIELD ENHANCEMENT FUND, LLC, LEDGERPRIME BITCOIN YIELD ENHANCEMENT MASTER FUND LP,

LEDGERPRIME DIGITAL ASSET OPPORTUNITIES FUND, LLC, LEDGERPRIME DIGITAL ASSET OPPORTUNITIES MASTER FUND LP, LEDGER PRIME LLC, LEDGERPRIME VENTURES, LP, LIQUID FINANCIAL USA INC., LIQUIDEX LLC, LIQUID SECURITIES SINGAPORE PTE LTD., LT BASKETS LTD., MACLAURIN INVESTMENTS LTD., MANGROVE CAY LTD., NORTH DIMENSION INC., NORTH DIMENSION LTD., NORTH WIRELESS DIMENSION INC., PAPER BIRD INC., PIONEER STREET INC., QUOINE INDIA PTE LTD., QUOINE PTE LTD., QUOINE VIETNAM CO. LTD., STRATEGY ARK COLLECTIVE LTD., TECHNOLOGY SERVICES BAHAMAS LIMITED, VERDANT CANYON CAPITAL LLC, WEST INNOVATIVE BARISTA LTD., WEST REALM SHIRES FINANCIAL SERVICES INC., WESTERN CONCORD ENTERPRISES LTD., and ZUBR EXCHANGE LTD.,

Counterclaim Defendants.

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, AND PETER GREAVES TO THE AMENDED COMPLAINT

FTX Digital Markets Ltd. ("**FTX Digital**"), Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators of FTX Digital and foreign representatives of the Provisional Liquidation of FTX Digital (the "**JPLs**" and, together with FTX Digital, the "**FTX Digital Defendants**"), submit this answer (the "**Answer**") to the amended complaint (the "**Amended Complaint**") filed by Alameda Research LLC, Alameda Research Ltd., FTX Trading Ltd., West Realm Shires Inc., and West Realm Shires Services, Inc. (collectively, "**Plaintiffs**" or "**U.S. Debtors**"). To the extent any allegations in the Amended Complaint are not expressly admitted, they are denied; including, but not limited to, any allegations contained in the headings used in the Amended Complaint. Any averment that the FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of an allegation shall have the effect of a denial.

In compliance with Federal Rule of Bankruptcy Procedure 7012(b), the FTX Digital Defendants state that they do not consent to the entry of final order or judgment by the Court.

NATURE OF THE CASE

1. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth regarding the U.S. Debtors' motives for bringing the Adversary Proceeding.[2] The remaining allegations in paragraph 1 consist of a summary of the nature of the Adversary Proceeding and argument and legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 1.

2. Paragraph 2 alleges legal conclusions and contains of a summary of the nature of the Adversary Proceeding and argument to which no response is required. To the extent a response is required, the FTX Digital Defendants deny making "serial threats" to attempt to relocate these

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Amended Complaint.

Chapter 11 Cases to The Bahamas and lack information or knowledge sufficient to form a belief as to the U.S. Debtors' reasons for bringing the Adversary Proceeding. The FTX Digital Defendants respectfully refer the Court to the June 9, 2023 hearing transcript for a complete and accurate description of any determinations made regarding both the U.S. Debtors' and FTX Digital's assets.

3. The FTX Digital Defendants deny that the allegations in paragraph 3 accurately and completely reflect what the JPLs "claim" on behalf of FTX Digital.

4. Paragraph 4 consists of a summary of argument to which no response is required. To the extent a response is required, the FTX Digital Defendants admit that they asserted that FTX Digital owns or has a license to the FTX.com intellectual property, that customers were "migrated" from FTX Trading to FTX Digital, and that FTX Digital has at the least $7.7 billion in receivables from the U.S. Debtors. The FTX Digital Defendants respectfully refer the Court to the JPLs' First Interim Report, dated February 8, 2023, for a complete and accurate description of its contents. The FTX Digital Defendants deny the remaining allegations in paragraph 4.

5. Paragraph 5 consists of a summary of inflammatory arguments to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 5.

6. Paragraph 6 consists of a summary of argument to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 6.

7. The FTX Digital Defendants deny the allegations in paragraph 7 except to admit that three individuals have pleaded guilty to fraud in connection with the FTX Group, Mr. Bankman-Fried is under indictment, and the U.S. District Court for the Southern District of New

York has imposed strict pretrial release conditions upon Mr. Bankman-Fried. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegation that Mr. Bankman-Fried described anything as the "jurisdictional battle vs. Delaware," but admit that the U.S. Debtors' citation to their own prior filing contains the same statement.

8. Paragraph 8 consists of a summary of argument to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 8 except to admit that the JPLs sought to file an application in The Bahamas with leave from the U.S. court. The FTX Digital Defendants respectfully refer the Court to the *Motion of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay Does Not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in the Supreme Court of the Commonwealth of the Bahamas Seeking Resolution of Non-US Law and Other Issues*, Case No. 22-11068-JTD [Dkt. No. 1192] for a complete and accurate description of the FTX Digital Defendants' contentions and to the June 9, 2023 hearing transcript for a complete and accurate description of any determinations made regarding both the U.S. Debtors' and FTX Digital's assets.

JURISDICTION AND VENUE

9. The FTX Digital Defendants admit that the Adversary Proceeding relates to the Chapter 11 Cases.

10. Paragraph 10 consists of legal conclusions to which no response is required.

11. Paragraph 11 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny that this adversary proceeding is a "core" proceeding under 28 U.S.C. §§ 157(b)(2)(A), (B), (O) and (P), except for those claims brought under sections 544, 548, and 550 of the Bankruptcy Code.

12. Paragraph 12 consists of legal conclusions to which no response is required.

13. Paragraph 13 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants admit that the Court is familiar with certain facts and background of the Chapter 11 Cases and with FTX Digital's chapter 15 proceeding, but deny any implication that this is the only Court familiar with relevant facts and deny the remaining allegations in paragraph 13.

14. Paragraph 14 consists of legal conclusions to which no response is required.

PARTIES

15. The FTX Digital Defendants admit the allegations in paragraph 15.

16. The FTX Digital Defendants admit the first sentence of paragraph 16. The second sentence of paragraph 16 consists of legal conclusions to which no response is required.

17. The FTX Digital Defendants admit the allegations in paragraph 17 except to deny the characterization that FTX Digital operated "for a short period of time."

18. The FTX Digital Defendants deny the allegations in paragraph 18.

19. The FTX Digital Defendants admit the allegations in paragraph 19 except to respectfully refer the Court to the Recognition Order for a complete and accurate description of this Court's findings.

20. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 20.

FACTUAL BACKGROUND

21. FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. The FTX Digital Defendants admit that FTX Digital was incorporated in The Bahamas on July 22, 2021 and that it operated until November 10, 2022. The FTX Digital Defendants deny the remaining allegations in paragraph 23.

24. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 24. The remainder of paragraph 24 summarizes public indictment records for which the FTX Digital Defendants respectfully refer the Court to for a complete and accurate description of their contents.

25. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 25.

26. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. The FTX Digital Defendants admit that there existed a plan to transfer property and rights from FTX Trading to FTX Digital, but deny that this plan was "[t]o accomplish the fraudulent scheme." The remaining allegations in paragraph 27 consist of a summary of argument and legal conclusions to which no response is required.

28. The FTX Digital Defendants admit that approximately $143 million of fiat currency was transferred into accounts in FTX Digital's name at Moonstone and Silvergate. The FTX Digital Defendants deny the remaining allegations in paragraph 28.

29. The FTX Digital Defendants admit that the New Terms of Service contain annexed schedules which made FTX Digital a service provider. The FTX Digital Defendants deny the remaining allegations in paragraph 29.

30. The FTX Digital Defendants deny that FTX Digital was regulated by the United States and lack information or knowledge sufficient to form a belief as to the truth of the remaining

allegations in paragraph 30. The FTX Digital Defendants further aver that, to the extent paragraph 30 contains legal conclusions, no response is required.

31. The FTX Digital Defendants admit that the U.S. Debtors entered into bankruptcy, but deny that FTX Digital entered liquidation, rather than provisional liquidation. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 31.

32. The FTX Digital Defendants admit the allegations in paragraph 32.

33. The FTX Digital Defendants admit that they have made claims to ownership of property, but deny that the JPLs' claims are to property outside of FTX Digital's estate. The FTX Digital Defendants deny that the JPLs have sought to relocate these proceedings to The Bahamas. The FTX Digital Defendants admit that the JPLs filed the Chapter 15 Petition and supporting Declaration of Brian Simms and respectfully refer the Court to those pleadings referenced in paragraph 33 for a complete and accurate description of their contents.

34. The FTX Digital Defendants deny the characterizations made in paragraph 34. The FTX Digital Defendants admit that they filed the pleadings referenced in paragraph 34 and respectfully refer the Court to those pleadings for a complete and accurate description of their contents.

35. The FTX Digital Defendants deny the characterizations made in paragraph 35 and respectfully refer the Court to the transcript of the chapter 15 recognition hearing for a complete and accurate description of its contents.

36. The FTX Digital Defendants admit that they made the assertions detailed in paragraph 36 in their First Interim Report, dated February 8, 2023, and respectfully refer the Court

to their First Interim Report for a complete and accurate description of its contents, and otherwise deny the allegations of paragraph 36.

37. The FTX Digital Defendants deny the allegations in paragraph 37.

38. Paragraph 38 consists of a summary of argument to which no response is required. To the extent a response is required, the FTX Digital Defendants admit that the New Terms of Service were part of the migration plan and deny the remaining allegations in paragraph 38.

39. The FTX Digital Defendants admit the first sentence in paragraph 39. The FTX Digital Defendants deny the second sentence in paragraph 39.

40. The FTX Digital Defendants deny the allegations in the first, second, fifth, and sixth bullet points in paragraph 40. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in the third, fourth, seventh, and eighth bullet points in paragraph 40.

41. The FTX Digital Defendants deny the allegations in paragraph 41.

42. The FTX Digital Defendants deny the allegations in paragraph 42.

43. The FTX Digital Defendants deny the allegations in paragraph 43 and respectfully refer the Court to the New Terms of Service for a complete and accurate description of its contents.

44. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of what the U.S. Debtors' "review" demonstrates with respect to the bullet points in paragraph 44.

45. The FTX Digital Defendants deny the allegations in the first clause of the first sentence of paragraph 45. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in the bullet points in paragraph 45.

46. The FTX Digital Defendants deny the allegations in paragraph 46 and respectfully refer the Court to the referenced terms of service for a complete and accurate description of its contents.

47. The FTX Digital Defendants deny the allegations in the first sentence of paragraph 47. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in the examples in paragraph 47.

48. The FTX Digital Defendants deny the allegations in paragraph 48.

49. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 49. The FTX Digital Defendants aver that the Invention Assignment Agreement and offers of employment speak for themselves.

50. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 50. The FTX Digital Defendants aver that the Invention Assignment Agreement speaks for itself.

51. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 51.

52. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 52.

53. Paragraph 53 consists of legal conclusions to which no response is required. To the extent the allegations in paragraph 53 concern an agreement with Cottonwood Grove Ltd., the FTX Digital Defendants aver that such agreement speaks for itself. The FTX Digital Defendants otherwise lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 53.

54. The FTX Digital Defendants deny the allegations in paragraph 54.

55. The FTX Digital Defendants deny the allegations in paragraph 55.

56. The FTX Digital Defendants aver that the indictment cited in paragraph 56 speaks for itself and respectfully refer the Court to the indictment for a complete and accurate description of its contents.

57. The FTX Digital Defendants aver that the third-party statements in the indictment cited in paragraph 57 speak for themselves and respectfully refer the Court to the indictment for a complete and accurate description of its contents.

58. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 58.

59. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 59.

60. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 61.

62. The FTX Digital Defendants deny the allegations in paragraph 62 and respectfully refer the Court to the terms of service, corporate charter and "any law" for a complete and accurate description of "Mr. Bankman-Fried and his agents' . . . power."

63. Paragraph 63 consists of summary of argument and legal conclusion to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 63.

64. Paragraph 64 consists of summary of argument and legal conclusion to which no response is required. To the extent a response is required, the FTX Digital Defendants lack

information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 64.

65. The FTX Digital Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 65.

CAUSES OF ACTION

COUNT I

66. Paragraph 66 contains no factual allegations to which a response is required. To the extent a response is required, the FTX Digital Defendants repeat each answer contained in paragraphs 1 through 65.

67. Paragraph 67 consists of legal conclusions to which no response is required.

68. The FTX Digital Defendants deny the allegations in paragraph 68.

69. Paragraph 69 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 69.

70. The FTX Digital Defendants deny the allegations in paragraph 70.

71. Paragraph 71 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 71.

72. Paragraph 72 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 72.

73. The FTX Digital Defendants deny the allegations in paragraph 73.

74. Paragraph 74 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 74.

COUNT II

75. Paragraph 75 contains no factual allegations to which a response is required. To the extent a response is required, the FTX Digital Defendants repeat each answer contained in paragraphs 1 through 65.

76. Paragraph 76 consists of legal conclusions to which no response is required.

77. The FTX Digital Defendants deny the allegations in paragraph 77.

78. Paragraph 78 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 78.

79. The FTX Digital Defendants deny the allegations in paragraph 79.

80. Paragraph 80 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 80.

81. Paragraph 81 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 81.

82. The FTX Digital Defendants deny the allegations in paragraph 82.

83. Paragraph 83 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 83.

COUNT III

84. Paragraph 84 contains no factual allegations to which a response is required. To the extent a response is required, the FTX Digital Defendants repeat each answer contained in paragraphs 1 through 65.

85. Paragraph 85 consists of legal conclusions to which no response is required.

86. The FTX Digital Defendants deny the allegations in paragraph 86.

87. Paragraph 87 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 87.

88. The FTX Digital Defendants deny the allegations in paragraph 88.

89. Paragraph 89 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 89.

90. The FTX Digital Defendants deny the allegations in paragraph 90.

91. Paragraph 91 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 91.

COUNT IV

92. Paragraph 92 contains no factual allegations to which a response is required. To the extent a response is required, the FTX Digital Defendants repeat each answer contained in paragraphs 1 through 65.

93. Paragraph 93 consists of legal conclusions to which no response is required.

94. The FTX Digital Defendants deny the allegations in paragraph 94.

95. Paragraph 95 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 95.

96. The FTX Digital Defendants deny the allegations in paragraph 96.

97. Paragraph 97 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 97.

98. The FTX Digital Defendants deny the allegations in paragraph 98.

99. Paragraph 99 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 99.

COUNT V

100. Paragraph 100 contains no factual allegations to which a response is required. To the extent a response is required, the FTX Digital Defendants repeat each answer contained in paragraphs 1 through 65.

101. Paragraph 101 consists of legal conclusions to which no response is required.

102. The FTX Digital Defendants deny the allegations in paragraph 102.

103. Paragraph 103 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 103.

104. The FTX Digital Defendants deny the allegations in paragraph 104.

105. Paragraph 105 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 105.

106. The FTX Digital Defendants deny the allegations in paragraph 106.

107. The FTX Digital Defendants deny the allegations in paragraph 107.

108. Paragraph 108 consists of legal conclusions to which no response is required. To the extent a response is required, the FTX Digital Defendants deny the allegations in paragraph 108.

COUNT VI

109. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 109 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 109, if necessary, following disposition of their motion.

110. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 110 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 110, if necessary, following disposition of their motion.

111. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 111 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 111, if necessary, following disposition of their motion.

112. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 112 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 112, if necessary, following disposition of their motion.

113. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 113 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 113, if necessary, following disposition of their motion.

114. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 114 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 114 if necessary, following disposition of their motion.

115. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 115 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 115, if necessary, following disposition of their motion.

116. The FTX Digital Defendants have filed a motion for this Court to abstain on Count VI; therefore, no response to paragraph 116 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 116, if necessary, following disposition of their motion.

COUNT VII

117. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 117 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 117, if necessary, following disposition of their motion.

118. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 118 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 118, if necessary, following disposition of their motion.

119. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 119 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 119, if necessary, following disposition of their motion.

120. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 120 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 120, if necessary, following disposition of their motion.

121. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 121 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 121, if necessary, following disposition of their motion.

122. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 122 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 122, if necessary, following disposition of their motion.

123. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 123 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 123, if necessary, following disposition of their motion.

124. The FTX Digital Defendants have filed a motion to dismiss Count VII; therefore, no response to paragraph 124 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 124, if necessary, following disposition of their motion.

COUNT VIII

125. The FTX Digital Defendants have filed a motion to dismiss Count VIII; therefore, no response to paragraph 125 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 125, if necessary, following disposition of their motion.

126. The FTX Digital Defendants have filed a motion to dismiss Count VIII; therefore, no response to paragraph 126 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 126, if necessary, following disposition of their motion.

127. The FTX Digital Defendants have filed a motion to dismiss Count VIII; therefore, no response to paragraph 127 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 127, if necessary, following disposition of their motion.

128. The FTX Digital Defendants have filed a motion to dismiss Count VIII; therefore, no response to paragraph 128 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 128, if necessary, following disposition of their motion.

129. The FTX Digital Defendants have filed a motion to dismiss Count VIII; therefore, no response to paragraph 129 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 129, if necessary, following disposition of their motion.

130. The FTX Digital Defendants have filed a motion to dismiss Count VIII; therefore, no response to paragraph 130 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 130, if necessary, following disposition of their motion.

COUNT IX

131. The FTX Digital Defendants have filed a motion to dismiss Count IX; therefore, no response to paragraph 131 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 131, if necessary, following disposition of their motion.

132. The FTX Digital Defendants have filed a motion to dismiss Count IX; therefore, no response to paragraph 132 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 132, if necessary, following disposition of their motion.

133. The FTX Digital Defendants have filed a motion to dismiss Count IX; therefore, no response to paragraph 133 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 133, if necessary, following disposition of their motion.

134. The FTX Digital Defendants have filed a motion to dismiss Count IX; therefore, no response to paragraph 134 is required at this time. The FTX Digital Defendants reserve all rights to respond to paragraph 134, if necessary, following disposition of their motion.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where such burden is otherwise on Plaintiffs as a matter of applicable substantive or procedural law, the FTX Digital Defendants assert the following defenses.

1. Counts I-V are void as a violation of applicable automatic stays.

2. Counts I-V are barred, in whole or in part, for failure to obtain leave to sue the JPLs.

3. Counts I-V fail to join indispensable parties.

4. Counts I-V fail to state a claim upon which relief can be granted.

5. Counts I-V are barred, in whole or in part, because some or all of the Plaintiffs lack standing to bring these claims.

6. Counts I-V are barred, in whole or in part, by the Plaintiffs' bad faith.

7. Counts I-V are barred, in whole or in part, by the doctrines of unjust enrichment, waiver, and estoppel.

8. Counts I-V are barred, in whole or in part, by the doctrine of duress.

9. Counts I-V are limited by the Plaintiffs' breach of the Cooperation Agreement (defined below).

10. Counts I-V are barred, in whole or in part, by the doctrine of unclean hands and *in pari delicto*.

11. Counts I-V are barred by the U.S. Constitution because they call for an advisory opinion from the Court.

12. Counts I-V are barred, in whole or in part, by the doctrine of ratification.

13. Counts I-V are tainted by a conflict of interest.

14. The costs, damages, and penalties the Plaintiffs seek to recover or impose are unreasonable, excessive, arbitrary, and capricious.

15. The Plaintiffs are not entitled to recover attorneys' fees or costs, or fees of litigation.

16. The FTX Digital Defendants reserve the right to plead additional defenses as may be appropriate depending upon facts later revealed during discovery.

The FTX Digital Defendants reserve all rights to assert affirmative defenses to Counts VI-IX, if necessary, including defenses arising under section 546 of the Bankruptcy Code, following disposition of the motion to abstain and the motion to dismiss.

THE FTX DIGITAL DEFENDANTS' COUNTERCLAIMS

Pursuant to Federal Rule of Civil Procedure 13, made applicable herein by Rule 7013 of the Federal Rules of Bankruptcy Procedure, the FTX Digital Defendants assert the following counterclaims (the "**Counterclaims**") against Alameda Research LLC, Alameda Research Ltd., FTX Trading Ltd., West Realm Shires Inc., West Realm Shires Services, Inc., FTX Property Holdings Ltd., Alameda Aus Pty Ltd., Alameda Global Services Ltd., Alameda Research (Bahamas) Ltd., Alameda Research Holdings Inc., Alameda Research KK, Alameda Research Pte Ltd., Alameda Research Yankari Ltd., Alameda TR Ltd., Alameda TR Systems S. de R. L., Allston Way Ltd., Analisya Pte Ltd., Atlantis Technology Ltd., Bancroft Way Ltd., Blockfolio, Inc., Blue Ridge Ltd., Cardinal Ventures Ltd., Cedar Bay Ltd., Cedar Grove Technology Services, Ltd., Clifton Bay Investments LLC, Clifton Bay Investments Ltd., Cottonwood Grove Ltd., Cottonwood Technologies Ltd., Crypto Bahamas LLC, DAAG Trading, DMCC, Deck Technologies Holdings LLC, Deck Technologies Inc., Deep Creek Ltd., Digital Custody Inc., Euclid Way Ltd., FTX

(Gibraltar) Ltd., FTX Canada Inc., FTX Certificates GmbH, FTX Crypto Services Ltd., FTX Digital Assets LLC, FTX Digital Holdings (Singapore) Pte Ltd., FTX EMEA Ltd., FTX Equity Record Holdings Ltd., FTX EU Ltd., FTX Europe AG, FTX Exchange FZE, FTX Hong Kong Ltd., FTX Japan Holdings K.K., FTX Japan K.K., FTX Japan Services KK, FTX Lend Inc., FTX Marketplace, Inc., FTX Products (Singapore) Pte Ltd., FTX Services Solutions Ltd., FTX Structured Products AG, FTX Switzerland GmbH, FTX Trading GmbH, FTX US Services, Inc., FTX US Trading, Inc., FTX Ventures Ltd., FTX Zuma Ltd., GG Trading Terminal Ltd., Global Compass Dynamics Ltd., Good Luck Games, LLC, Goodman Investments Ltd., Hannam Group Inc., Hawaii Digital Assets Inc., Hilltop Technology Services LLC, Hive Empire Trading Pty Ltd., Innovatia Ltd., Island Bay Ventures Inc., Killarney Lake Investments Ltd., Ledger Holdings Inc., LedgerPrime Bitcoin Yield Enhancement Fund, LLC, LedgerPrime Bitcoin Yield Enhancement Master Fund LP, LedgerPrime Digital Asset Opportunities Fund, LLC, LedgerPrime Digital Asset Opportunities Master Fund LP, Ledger Prime LLC, LedgerPrime Ventures, LP, Liquid Financial USA Inc., LiquidEX LLC, Liquid Securities Singapore Pte Ltd., LT Baskets Ltd., Maclaurin Investments Ltd., Mangrove Cay Ltd., North Dimension Inc., North Dimension Ltd., North Wireless Dimension Inc., Paper Bird Inc., Pioneer Street Inc., Quoine India Pte Ltd., Quoine Pte Ltd., Quoine Vietnam Co. Ltd., Strategy Ark Collective Ltd., Technology Services Bahamas Limited, Verdant Canyon Capital LLC, West Innovative Barista Ltd., West Realm Shires Financial Services Inc., Western Concord Enterprises Ltd., and Zubr Exchange Ltd. (collectively, the "**Counterclaim Defendants**") and allege the following based upon personal knowledge derived from their investigation to date, and upon information and belief as to all other matters.

NATURE OF COUNTERCLAIMS

1. Since their appointment, the JPLs—court-appointed fiduciaries with more than fifty thousand constituents already asserting claims on FTX Digital's portal—have been stonewalled by the Counterclaim Defendants in their attempts to fulfill their duty of identifying, safeguarding, and maintaining the assets of FTX Digital during its Provisional Liquidation.[3] Indeed, the Counterclaim Defendants have been the biggest impediment to the JPLs achieving the maximum possible value for FTX Digital's creditors and customers.

2. In an effort to tear down that wall, the JPLs sought in good faith to work with the Counterclaim Defendants towards what should have been a shared goal of efficient administration of their respective bankruptcy estates. To that end, the JPLs negotiated the terms of the Cooperation Agreement (defined below) with the Counterclaim Defendants. The point of this agreement was to divide areas of responsibility between the two estates; allow for the efficient administration of both estates; avoid unnecessary duplication; and respect the legal regimes in both the United States and The Bahamas. The Cooperation Agreement did not resolve all open issues between the JPLs and the Counterclaim Defendants. But, it did require the parties to coordinate in good faith on an efficient and cooperative process to resolve open issues in the appropriate forum. Both this Court and the Bahamas Court approved the Cooperation Agreement.

3. Upon executing the Cooperation Agreement, the JPLs materially performed on their end of the bargain. For instance, the JPLs ceased prosecuting numerous issues set for resolution in the early months of 2023, including those related to all first and second day relief in these cases and potential motions to dismiss certain U.S. Debtors' cases in favor of a more proper

[3] On November 10, 2022 (the day before these Chapter 11 Cases were filed), FTX Digital became a debtor in a provisional liquidation under the control and supervision of the Bahamas Court (the "**Provisional Liquidation**").

forum. When it came time for the Counterclaim Defendants to reciprocate and honor their bargained-for obligations under the Cooperation Agreement, they balked. Upon information and belief, the Counterclaim Defendants have used the Cooperation Agreement in bad faith as an instrument to seek to silence the JPLs and frustrate the operation of the Provisional Liquidation.

4. Indeed, in the six months since the Counterclaim Defendants executed the Cooperation Agreement, they have managed to breach each and every obligation, specifically:

- Instead of honoring their agreement to allow the JPLs to collect all assets in FTX Digital's name, they have actively obstructed the JPLs' efforts to recover FTX Digital's funds that were seized by the U.S. Government, upon information and belief with the active assistance of the Counterclaim Defendants' professionals;
- Instead of honoring their agreement to allow the JPLs to control $45 million held by Tether, they have actively obstructed the JPLs' efforts to recover that Tether;
- Despite promising to work with the JPLs to cooperatively restart the International Platform, the Counterclaim Defendants have been actively working to *exclude* the JPLs from that process;
- Instead of honoring their agreement to allow the JPLs to manage and monetize FTX's real property in The Bahamas, they have actively interfered with the JPLs' efforts to do so;
- Despite their obligation to "share information in their possession concerning the matters contemplated" by the Cooperation Agreement, they have refused to turn over all of FTX Digital's information; and
- Instead of honoring their agreement to work with the JPLs in good faith to determine ownership of assets that are subject to competing claims, the Plaintiffs filed the Adversary Proceeding without any meaningful notice or engagement to resolve the issues consensually, and in violation of the automatic stay.

5. The Counterclaim Defendants have demonstrated a fundamental lack of respect for this Court's extension of comity to FTX Digital's Provisional Liquidation and the Bahamas Court presiding over that Provisional Liquidation. The Counterclaim Defendants' actions have caused injury to FTX Digital and its creditors and customers, whose interests the JPLs are charged to protect. The FTX Digital Defendants are therefore entitled to post-petition damages for the Counterclaim Defendants' breaches.

6. Further, the FTX Digital Defendants respectfully request a declaratory judgment regarding terms under which FTX Digital held digital assets and fiat in the United States for the benefit of its customers.

7. FTX Digital's claims against the Counterclaim Defendants are entitled to administrative priority status under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

JURISDICTION AND VENUE

8. The Counterclaims are brought under Rule 7013 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and sections 362, 1520, 105(a), 503(b)(1)(A) and 507(a)(2) of the United States Bankruptcy Code (the "**Bankruptcy Code**").

9. This Court's determination of the Counterclaims constitutes a "core" proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (C), and (P).

10. This Court has jurisdiction over the Counterclaims under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012.

11. Venue is proper for the Counterclaims under 28 U.S.C. §§ 1408 and 1409.

12. Pursuant to Rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the FTX Digital Defendants consent to the entry of a final order or judgment by this Court on the Counterclaim Counts I-VIII to the extent it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. The FTX Digital Defendants do not consent to the entry of a final order or judgment by this Court on Count IX of the Counterclaims.

PARTIES

13. The counterclaim plaintiffs in this proceeding are FTX Digital Markets Ltd. ("**FTX Digital**"), Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators of FTX Digital and foreign representatives of the Provisional Liquidation of FTX Digital (the "**JPLs**" and, together with FTX Digital, the "**FTX Digital Defendants**").

14. The Counterclaim Defendants in this proceeding are all parties to the Cooperation Agreement (as defined herein). They are: Alameda Research LLC, Alameda Research Ltd., FTX Trading Ltd. ("**FTX Trading**"), West Realm Shires Inc., West Realm Shires Services, Inc., FTX Property Holdings Ltd., Alameda Aus Pty Ltd., Alameda Global Services Ltd., Alameda Research (Bahamas) Ltd., Alameda Research Holdings Inc., Alameda Research KK, Alameda Research Pte Ltd., Alameda Research Yankari Ltd., Alameda TR Ltd., Alameda TR Systems S. de R. L., Allston Way Ltd., Analisya Pte Ltd., Atlantis Technology Ltd., Bancroft Way Ltd., Blockfolio, Inc., Blue Ridge Ltd., Cardinal Ventures Ltd., Cedar Bay Ltd., Cedar Grove Technology Services, Ltd., Clifton Bay Investments LLC, Clifton Bay Investments Ltd., Cottonwood Grove Ltd., Cottonwood Technologies Ltd., Crypto Bahamas LLC, DAAG Trading, DMCC, Deck Technologies Holdings LLC, Deck Technologies Inc., Deep Creek Ltd., Digital Custody Inc., Euclid Way Ltd., FTX (Gibraltar) Ltd., FTX Canada Inc., FTX Certificates GmbH, FTX Crypto Services Ltd., FTX Digital Assets LLC, FTX Digital Holdings (Singapore) Pte Ltd., FTX EMEA Ltd., FTX Equity Record Holdings Ltd., FTX EU Ltd., FTX Europe AG, FTX Exchange FZE, FTX Hong Kong Ltd., FTX Japan Holdings K.K., FTX Japan K.K., FTX Japan Services KK, FTX Lend Inc., FTX Marketplace, Inc., FTX Products (Singapore) Pte Ltd., FTX Services Solutions Ltd., FTX Structured Products AG, FTX Switzerland GmbH, FTX Trading GmbH, FTX US Services, Inc., FTX US Trading, Inc., FTX Ventures Ltd., FTX Zuma Ltd., GG Trading Terminal Ltd., Global

Compass Dynamics Ltd., Good Luck Games, LLC, Goodman Investments Ltd., Hannam Group Inc., Hawaii Digital Assets Inc., Hilltop Technology Services LLC, Hive Empire Trading Pty Ltd., Innovatia Ltd., Island Bay Ventures Inc., Killarney Lake Investments Ltd., Ledger Holdings Inc., LedgerPrime Bitcoin Yield Enhancement Fund, LLC, LedgerPrime Bitcoin Yield Enhancement Master Fund LP, LedgerPrime Digital Asset Opportunities Fund, LLC, LedgerPrime Digital Asset Opportunities Master Fund LP, Ledger Prime LLC, LedgerPrime Ventures, LP, Liquid Financial USA Inc., LiquidEX LLC, Liquid Securities Singapore Pte Ltd., LT Baskets Ltd., Maclaurin Investments Ltd., Mangrove Cay Ltd., North Dimension Inc., North Dimension Ltd., North Wireless Dimension Inc., Paper Bird Inc., Pioneer Street Inc., Quoine India Pte Ltd., Quoine Pte Ltd., Quoine Vietnam Co. Ltd., Strategy Ark Collective Ltd., Technology Services Bahamas Limited, Verdant Canyon Capital LLC, West Innovative Barista Ltd., West Realm Shires Financial Services Inc., Western Concord Enterprises Ltd., and Zubr Exchange Ltd.

15. Counterclaim Defendants Alameda Research LLC, Alameda Research Holdings Inc., Blockfolio, Inc., Clifton Bay Investments LLC, Crypto Bahamas LLC, Deck Technologies Holdings LLC, Deck Technologies Inc., Digital Custody Inc., FTX Digital Assets LLC, FTX Lend Inc., FTX Marketplace, Inc., FTX US Services, Inc., FTX US Trading, Inc., Good Luck Games, LLC, Hawaii Digital Assets Inc., Hilltop Technology Services LLC, Island Bay Ventures Inc., Ledger Holdings Inc., Ledger Prime LLC, North Dimension Inc., North Wireless Dimension Inc., Paper Bird Inc., Pioneer Street Inc., Verdant Canyon Capital LLC, West Realm Shires Financial Services Inc., West Realm Shires, Inc., and West Realm Shires Services, Inc. are incorporated under Delaware law.

16. Counterclaim Defendants Alameda Research Ltd., Alameda Global Services Ltd., Clifton Bay Investments Ltd., FTX Services Solutions Ltd., FTX Ventures Ltd., Goodman

Investments Ltd., Killarney Lake Investments Ltd., and North Dimension Ltd. are incorporated under the laws of the British Virgin Islands.

17. Counterclaim Defendants FTX Trading, Alameda TR Ltd., Allston Way Ltd., Atlantis Technology Ltd., Bancroft Way Ltd., Blue Ridge Ltd., Cardinal Ventures Ltd., Cedar Bay Ltd., Cedar Grove Technology Services, Ltd., Cottonwood Technologies Ltd., Deep Creek Ltd., Euclid Way Ltd., Global Compass Dynamics Ltd., LT Baskets Ltd., Mangrove Cay Ltd., Strategy Ark Collective Ltd., West Innovative Barista Ltd., and Western Concord Enterprises Ltd. are incorporated under the laws of Antigua and Barbuda.

18. Counterclaim Defendants FTX Property Holdings Ltd., Alameda Research (Bahamas) Ltd., and Technology Services Bahamas Limited are incorporated under the laws of The Bahamas.

19. Counterclaim Defendants Alameda Aus Pty Ltd. and Hive Empire Trading Pty Ltd. are incorporated under the laws of Australia.

20. Counterclaim Defendants Alameda Research KK, FTX Japan Holdings K.K., FTX Japan K.K., FTX Japan Services KK, Liquid Financial USA Inc., and LiquidEX LLC are incorporated under the laws of Japan.

21. Counterclaim Defendants Alameda Research Pte Ltd., Analisya Pte Ltd., FTX Digital Holdings (Singapore) Pte Ltd., FTX Products (Singapore) Pte Ltd., Liquid Securities Singapore Pte Ltd., and Quoine Pte Ltd. are incorporated under the laws of Singapore.

22. Counterclaim Defendants Alameda Research Yankari Ltd. and FTX Zuma Ltd. are incorporated under the laws of Nigeria.

23. Counterclaim Defendant Alameda TR Systems S. de R. L. is incorporated under the laws of Panama.

24. Counterclaim Defendants Cottonwood Grove Ltd. and FTX Hong Kong Ltd. are incorporated under the laws of Hong Kong.

25. Counterclaim Defendants DAAG Trading, DMCC and FTX Exchange FZE are incorporated under the laws of the United Arab Emirates.

26. Counterclaim Defendants FTX (Gibraltar) and Zubr Exchange Ltd. are incorporated under the laws of Gibraltar.

27. Counterclaim Defendant FTX Canada Inc. is incorporated under the laws of Canada.

28. Counterclaim Defendants FTX Certificates GmbH, FTX Europe AG, and FTX Switzerland GmbH are incorporated under the laws of Switzerland.

29. Counterclaim Defendants FTX Crypto Services Ltd., FTX EMEA Ltd., FTX EU Ltd., and Innovatia Ltd. are incorporated under the laws of Cyprus.

30. Counterclaim Defendants FTX Equity Record Holdings Ltd. and Maclaurin Investments Ltd. are incorporated under the laws of the Seychelles.

31. Counterclaim Defendant FTX Structured Products AG is incorporated under the laws of Liechtenstein.

32. Counterclaim Defendant FTX Trading GmbH is incorporated under the laws of Germany.

33. Counterclaim Defendant GG Trading Terminal Ltd. is incorporated under the laws of Ireland.

34. Counterclaim Defendant Hannam Group Inc. is incorporated under the laws of South Korea.

35. Counterclaim Defendants LedgerPrime Bitcoin Yield Enhancement Fund, LLC, LedgerPrime Bitcoin Yield Enhancement Master Fund LP, LedgerPrime Digital Asset Opportunities Fund, LLC, LedgerPrime Digital Asset Opportunities Master Fund LP, and LedgerPrime Ventures, LP are incorporated under the laws of the Cayman Islands.

36. Counterclaim Defendant Quoine India Pte Ltd. is incorporated under the laws of India.

BACKGROUND

A. History of the FTX International Platform and Relocation to The Bahamas

37. FTX Trading was incorporated in April 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua. Initially, FTX Trading was responsible for running the FTX Group's international digital asset exchange platform (the "**International Platform**") — the platform through which the FTX Group did business with somewhere between 2.4 million to upwards of 7.6 million customers, all understood to be located outside the United States (the "**International Customers**"). The International Platform was initially headquartered in Hong Kong, China.

38. On December 14, 2020, the Commonwealth of The Bahamas enacted a licensing and regulatory regime for the digital asset industry pursuant to the Digital Assets and Registration Exchange Act of 2020 (the "**DARE Act**"). To take advantage of The Bahamas' new regulatory regime, the FTX Group took a series of steps to relocate its business to The Bahamas. The move was highly publicized and the FTX Group made multiple public announcements and statements about the relocation of its headquarters from Hong Kong to The Bahamas.

39. A new entity, FTX Digital, was incorporated in The Bahamas by July 22, 2021 so that the FTX Group could obtain a license to legally run the International Platform in The Bahamas. To that end, FTX Digital was registered as a digital asset business ("**DAB**") under

Section 8 of the DARE Act. As a DAB, FTX Digital became the only FTX Group entity regulated to run the International Platform with respect to regulated products, which constituted 90% of the products on the International Platform. Pursuant to the DARE Act, a DAB includes, among other things, the business of "operating as a digital asset service provider[.]" DARE Act § 6(d). Under the DARE Act, a digital asset service provider is "a person that – (a) under an agreement as part of its business – (i) can undertake a digital asset transaction on behalf of another person; or (ii) has power of attorney over another person's digital asset; or (b) operates as a market maker for digital assets." DARE Act § 1.

40. Between July 2021 and May 2022, the FTX Group transitioned its headquarters and business to The Bahamas, namely to FTX Digital, by, among other things, (a) transferring the employment contracts of at least 38 individuals, including the co-founders, senior management, and key employees to FTX Digital; (b) creating and executing a "migration plan" to migrate customers to FTX Digital's business from FTX Trading; (c) opening bank accounts in FTX Digital's name which received and sent fiat currency from and to International Customers; (d) funding the purchase of upwards of $250,000,000 worth of real property to establish an FTX campus with offices and housing for hundreds of employees; and perhaps most importantly, (e) uploading new terms of service that effectuated the novation of FTX Trading to FTX Digital as the counterparty to the International Customers.

B. FTX Digital Holds Assets for Customers Pursuant to the Terms of Service

41. After the migration of customers and novation of the Terms of Service, FTX Digital may hold digital assets and fiat in the United States in trust for the benefit of its migrated or new customers, as indicated by the following:

- An internal policy document entitled "FTX Digital Markets Limited, Safeguarding of Assets & Digital Token Management Policy," dated August 16, 2021, which states: "All third-party providers are aware that customer assets are held in trust."

- Clause 8.2.6 of the New Terms of Service, which states: "(A) *Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading. As the owner of Digital Assets* in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account;" "(B) *None* of the Digital Assets in your Account are *the property of*, or shall or may be loaned to, *FTX Trading*; FTX Trading does *not* represent or treat Digital Assets in User's Accounts *as belonging to FTX Trading*;" "(C) You control the Digital Assets held in your Account. . . ." (emphases added).

- Clause 1.3 of the New Terms of Service provides that "'FTX Trading' (or 'we', 'our' or 'us') [is to be] read as reference to the Service Provider specified in the Specified Service Schedule." Therefore, Clause 8.2.6's references to FTX Trading are actually references to FTX Digital.

42. The Old Terms of Service did not contain clauses to the same effect, meaning fiat and digital assets may not have been held in the same manner.

43. In order to establish a custodial trust under English law, three elements are required: (i) the trustee's intention to hold assets in trust; (ii) sufficient identification of the trust beneficiary; and (iii) sufficient identification of the trust assets. At this time (and primarily due to the U.S. Debtors blocking the JPLs' access to FTX Digital's data), the JPLs lack sufficient information to, in their present view, conclusively determine whether all three elements have been met, particularly as evidence of intent may be shown by extrinsic evidence.

C. The FTX Group Collapse and Bankruptcy Proceedings

44. On November 10, 2022, the Securities Commission of The Bahamas (the "**SCB**") suspended the registration of FTX Digital under section 19 of the DARE Act and petitioned the Supreme Court of the Commonwealth of the Bahamas (the "**Bahamas Court**") for the winding up and Provisional Liquidation of FTX Digital.

45. The Bahamas Court granted the SCB's petition the same day and appointed Brian Simms KC as FTX Digital's provisional liquidator.

46. On November 11, 2022 and November 14, 2022, the Counterclaim Defendants commenced these Chapter 11 Cases.

47. On November 14, 2022, the Bahamas Court appointed Kevin G. Cambridge and Peter Greaves as additional joint provisional liquidators.

48. The Provisional Liquidation Order provided for the JPLs to displace FTX Digital's officers and directors. The JPLs are court-appointed officers tasked with identifying, safeguarding, and maintaining the assets of FTX Digital during the period of FTX Digital's Provisional Liquidation.

49. On November 15, 2022, the JPLs filed a petition on behalf of FTX Digital for recognition of its Provisional Liquidation as a foreign main proceeding in the United States Bankruptcy Court for the Southern District of New York commencing the chapter 15 case, which was thereafter transferred to this Court. *In re FTX Digital Markets Ltd.*, Case No. 22-11516 (Bankr. S.D.N.Y. 2022) [Dkt. No. 1].

50. The Counterclaim Defendants initially expressed their objection to recognition of FTX Digital's Provisional Liquidation, but their objection was resolved through the Cooperation Agreement.

51. On February 15, 2023, this Court entered an order recognizing FTX Digital's Provisional Liquidation as a foreign main proceeding and the JPLs as the foreign representatives of the FTX Digital estate in the U.S. (the "**Recognition Order**"). *See Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, Case No. 22-10217-JTD [Dkt. No. 129].

52. In the Recognition Order, this Court granted, among other things, "all relief and protection" afforded to foreign main proceedings under section 1520 of the Bankruptcy Code, including but not limited to section 362 of the Bankruptcy Code. *Id.* ¶ 4. The Recognition Order

further provided that "all of the property of FTX Digital within the territorial jurisdiction of the United States is entrusted to the Joint Provisional Liquidators." *Id.* ¶ 6.

53. The Counterclaim Defendants reviewed, commented on, and agreed to the Recognition Order before it was submitted to the Court.

D. Initial Disputes Between the JPLs and the Counterclaim Defendants

54. Following their appointment and as part of their duties, the JPLs began to investigate and secure the assets and liabilities of FTX Digital's estate. Counsel for and officers of each of the Counterclaim Defendants immediately resisted the JPLs' efforts. For instance, once the JPLs lost access to FTX Digital's own electronic records, including those that relate to FTX Digital's property and financial affairs, the Counterclaim Defendants, through their common representatives, refused to restore the JPLs' access.

55. On December 9, 2022, the JPLs filed an emergency turnover motion (the "**Emergency Turnover Motion**") asking the Court to rectify this wrong by requiring that the Counterclaim Defendants turn over access to records concerning FTX Digital's property and financial affairs. *See Emergency Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd., (I) For Relief from Automatic Stay and (II) to Compel Turnover of Electronic Records Under Sections 542, 1519(a)(3), 1521(a)(7), and 1522 of the Bankruptcy Code*, Case No. 22-11217-JTD [Dkt. No. 27].

56. During this time, the JPLs also raised certain concerns over the Counterclaim Defendants' process that were ripe for resolution, including that (i) the best interests of FTX Trading's creditors would be served by dismissing its chapter 11 case in favor of resolution in The Bahamas; and (ii) the Counterclaim Defendants' application for retention of certain professionals could be problematic given conflicts of interest created by certain prepetition representations of

the Counterclaim Defendants and their principals (including Mr. Bankman-Fried in his personal capacity) during the time an alleged fraud was being committed.

E. The Cooperation Agreement

57. Over the 2022 holiday season and into early 2023, the JPLs, Mr. Ray, and their respective counsel spent several days, including two at White & Case's offices in Miami, Florida, attempting to resolve their disputes. For their part, the JPLs negotiated in good faith an agreement to resolve, among other things, issues in the Emergency Turnover Motion, the potential dismissal of FTX Trading's chapter 11 case, and their objections to certain retention applications.

58. During this time the JPLs stood down on these issues to promote cooperation between the parties. On January 4, 2023, for example, the Court convened a status conference during which counsel to the Counterclaim Defendants suggested that this Court push the hearing on the Emergency Turnover motion to the following week. Jan. 4 Hr'g. Tr. at 6:15-7:6. Counsel continued, "[i]f [the parties] are unable to reach agreement, we would go forward on a contested basis on the motion to compel on the 13th." *Id.* at 8:23-25. Counsel to the JPLs agreed and further requested that the Court extend the deadline to file a reply to the Emergency Turnover Motion because "we don't think further pleadings being filed now will be constructive." *Id.* at 7:12-17, 10:21-25. Both the Counterclaim Defendants and this Court consented to that request. *Id.* at 11:16-18.

59. On January 6, 2023, these negotiations led to the execution of a cooperation agreement (the "**Cooperation Agreement**"). Upon its execution, the JPLs dropped their efforts in dismissing FTX Trading's chapter 11 case, pursuing the Emergency Turnover Motion, and raising objections to certain associated applications.

60. On February 9, 2023, this Court entered an Order approving the Cooperation Agreement pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code. *Order Approving*

the Cooperation Agreement between the Debtors and the Joint Provisional Liquidators of FTX Digital Markets Ltd., Case No. 22-11068-JTD [Dkt. No. 683]. Thereafter, the Cooperation Agreement became immediately enforceable, by its terms, post-petition against all of the Counterclaim Defendants.

61. The next day, the Bahamas Court also approved the Cooperation Agreement, making the Cooperation Agreement enforceable in The Bahamas against all of the Counterclaim Defendants. *See Order (Settlement and Co-Operation Agreement), In the Matter of FTX Digital Markets Ltd.*, 10 February, 2023.

62. The Cooperation Agreement resolved several key issues by, among other things, mandating that:

- The Counterclaim Defendants and the JPLs support the Provisional Liquidation of FTX Digital and the Chapter 11 Cases, respectively (Cooperation Agreement, ¶¶ 12-13);
- FTX Digital has primary responsibility for recovering value from the assets and property held in FTX Digital's name (*Id.* ¶ 4);
- FTX Digital takes the lead in managing and/or selling the properties owned by FTX Property Holdings Ltd. ("**PropCo**") (*Id.* ¶ 15);
- The Counterclaim Defendants turn over the information the FTX Digital Defendants sought in the Emergency Turnover Motion (*Id.* ¶ 22);
- FTX Digital has primary responsibility for recovering value from the approximately $45 million Tether International Limited ("**Tether**") funds (*Id.* ¶ 4);
- The Parties cooperate regarding the future of the International Platform and the cryptocurrency associated with the International Platform (*Id.* ¶ 6); and
- The Parties work together to determine ownership of assets that are subject to competing claims and, where one Party wishes to resolve a dispute, such Party provides reasonable notice to the other party before proceeding with litigation (*Id.* ¶ 11).

F. The Counterclaim Defendants Interfere with the FTX Digital Defendants' Efforts to Regain Control of Bank Accounts Located in the United States

63. The Cooperation Agreement grants FTX Digital primary responsibility for recovering value from the assets and property held in FTX Digital's name. Cooperation Agreement, ¶ 4. The Cooperation Agreement further provides that the Counterclaim Defendants "shall support the continuation of [FTX Digital's] provisional liquidation." *Id.* ¶ 12.

64. Prepetition, in the normal course of business, FTX Digital opened numerous accounts at various banks in its own name. For instance, FTX Digital had five bank accounts in its name and under its control at Silvergate Bank, ending in 2549, 2556, 2564, 0036, and 0037 (the "**Silvergate Accounts**"). As of November 10, 2022, the Silvergate Accounts collectively had approximately $6 million and approximately €87 million on deposit. FTX Digital also had a bank account in its name and under its control ending in 2685 at Farmington State Bank d/b/a Moonstone Bank (the "**Moonstone Account**"), which had nearly $50,000,000 on deposit as of January 4, 2023. The Silvergate Accounts and the Moonstone Account are "property held in FTX Digital's name," as specified in the Cooperation Agreement.

65. On January 20, 2023, the United States Department of Justice informed the Court that "the United States has seized . . . approximately 56 million in United States currency and 87 million Euros from accounts at Moonstone Bank and Silvergate." *See United States' Notice of Asset Seizures*, Case No. 22-11217 [Dkt No. 119]. It is unclear, at this point, what role, if any, the Counterclaim Defendants or their representatives had in such seizures.

66. The JPLs have been actively seeking the release of the frozen and seized Moonstone Account and Silvergate Accounts from the U.S. Government. But upon information and belief, the Counterclaim Defendants have deliberately interfered with these post-seizure efforts. For example, on April 12, 2023, at a hearing before this Court, counsel for the Counterclaim

Defendants conceded that they have been "working in parallel" with the U.S. Government to "secure" funds belonging to FTX Digital. *See* Apr. 12, 2023 Hr'g Tr. at 10:07-10 ("We also appreciate the U.S. criminal authorities working in parallel with us to secure assets. This includes approximately 100 million in cash in the name of FTX Digital.").

67. The Counterclaim Defendants have also continued to assert rights to FTX Digital's assets in the Moonstone and Silvergate Accounts. *Debtors' Objection to Motion of the Joint Provisional Liquidators for a Determination that The U.S. Debtors' Automatic Stay Does Not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in the Supreme Court of the Commonwealth of the Bahamas Seeking Resolution of Non-Us Law and Other Issues*, Case No. 22-11068-JTD [Dkt. No. 1409], ¶ 49 ("[A]voidance claims in the Adversary Proceeding [] confirm that the [U.S.] Debtors stand first in line to recover this cash asset [the cash in the Moonstone Account and Silvergate Accounts] to the extent it is ever released by the government[.]").

68. Without access to liquid funds, the FTX Digital Defendants cannot preserve assets in FTX Digital's name which are worth hundreds of millions of dollars. These assets are consequentially being wasted, lost, and depreciated by multi-millions of dollars over time.

G. The Counterclaim Defendants Breach Their PropCo Obligations

69. With respect to PropCo, the Cooperation Agreement provides that the JPLs "shall take the lead in managing the properties, determining the appropriate strategy for monetization of the properties, identifying buyers and conducting the marketing process." Cooperation Agreement, ¶ 15. The Cooperation Agreement further provides that (1) "a liquidation proceeding with respect to Prop[C]o will be opened in the Bahamas Court," or (2) the properties will be liquidated through "another *mutually acceptable* arrangement for the sale of the properties." *Id.* (emphasis added).

70. Consistent with the Cooperation Agreement, the JPLs have been acting in good faith to maintain, preserve and protect the properties. They have done so at considerable expense to FTX Digital's estate, including, but not limited to, the payment of security, cleaning, and utility costs in connection with the properties.

71. Further, per the Cooperation Agreement, the JPLs also began to take steps in good faith to open a liquidation proceeding for PropCo in the Bahamas Court. After discussing it with representatives of the Counterclaim Defendants, the JPLs served a statutory demand on PropCo on February 14, 2023. The Counterclaim Defendants, through counsel, responded by threatening that the JPLs violated PropCo's automatic stay. Consistent with the Cooperation Agreement and with the Counterclaim Defendants' promise to continue discussing options to initiate a liquidation proceeding of PropCo, the JPLs withdrew their statutory demand on February 17, 2023. Thereafter, the Counterclaim Defendants failed to re-engage with the JPLs concerning any PropCo liquidation proceedings in The Bahamas, despite repeated efforts by the JPLs to engage on the issue.

72. On April 28, 2023, the JPLs heard from property managers that individuals from the Counterclaim Defendants' local Bahamian counsel and Counterclaim Defendants' financial advisor, Alvarez & Marsal North America, LLC ("**A&M**"), were attempting to access the PropCo properties and otherwise causing confusion regarding the control of such properties in contravention of the Cooperation Agreement. When the JPLs confronted the Counterclaim Defendants about these actions, the Counterclaim Defendants informed the JPLs that they instructed A&M to sell the properties for cash. The Counterclaim Defendants did not seek the JPLs' consent before taking the lead on a sale process as they are required to do under the

Cooperation Agreement. The JPLs did not, and do not, agree to the Counterclaim Defendants commencing any sale process without the JPLs' consent.

H. The Counterclaim Defendants Continue to Withhold FTX Digital's Data from the JPLs

73. The Cooperation Agreement also provides that the "Parties will share information in their possession concerning the matters contemplated by this Agreement." Cooperation Agreement, ¶ 22. In reliance on the Counterclaim Defendants' promises of forthcoming productions of FTX Digital's information, the JPLs stopped prosecuting the Emergency Turnover Motion.

74. The information-sharing provisions of the Cooperation Agreement are subject to the negotiated, mutually agreeable non-disclosure agreement ("**NDA**"), which the Counterclaim Defendants and the JPLs executed on January 30, 2023. Around that time, the Counterclaim Defendants turned over some of FTX Digital's information, such as QuickBooks records and an incomplete copy of the Amazon Web Services ("**AWS**") system, which holds all the data of the FTX International Platform.

75. Despite the Cooperation Agreement and NDA (and numerous informal representations otherwise), the Counterclaim Defendants continue to withhold critical FTX Digital materials from the JPLs, including (i) FTX Digital employee communications in the Counterclaim Defendants' possession; (ii) a complete copy of the AWS system; and (iii) FTX Digital's cloud based or share-drives.

76. Most recently, the Counterclaim Defendants have demanded that the FTX Digital Defendants *again* submit a request for their own information with the promise that, once received, the Counterclaim Defendants would make the information immediately available. Despite the fact that this agreement was the Counterclaim Defendants' clear attempt to limit the FTX Digital

Defendants' use of their own data, the FTX Digital Defendants acquiesced in an effort to put these gating issues to rest. But even after the FTX Digital Defendants served the agreed-upon document requests, the Counterclaim Defendants have still not agreed to give the JPLs FTX Digital's own data.

77. The Counterclaim Defendants' actions have deprived the FTX Digital Defendants of crucial information needed to properly administer the FTX Digital estate, causing the FTX Digital Defendants to incur unnecessary costs and attorneys' fees.

I. The Counterclaim Defendants Try to Obtain the Tether Funds

78. Through the Cooperation Agreement, "[t]he Parties agree that [FTX Digital] shall be primarily responsible for recovering value from . . . (b) the approximately $45 million of [Tether] currently frozen in The Bahamas." Cooperation Agreement, ¶ 4.

79. On November 12, 2022, the Bahamas Court issued an order authorizing the SCB to instruct FTX Digital to transfer assets to digital wallets controlled by the SCB. *FTX Digital Markets Ltd.*, 8 February 2023 Interim Report, § 11.1. The SCB identified approximately $45 million of cryptocurrency tokens (the "**Tether Funds**") in a digital wallet held by Tether – a cryptocurrency company located in The Bahamas. *Id.*

80. The SCB then sent instructions for the transfer of the Tether Funds to the SCB-controlled wallet. *Id.* But these tokens were not transferred because, after meeting with Tether representatives, the SCB agreed that in light of the chapter 11 proceedings, Tether would maintain a freeze over the Tether Funds until ownership of the tokens was resolved.

81. Thereafter, the Counterclaim Defendants and the JPLs negotiated and executed the Cooperation Agreement. Despite the clear terms of the Cooperation Agreement, not even a month had passed before the Counterclaim Defendants made claim to the Tether Funds. The Counterclaim Defendants have also recently conceded that they have made efforts to secure the

Tether Funds for themselves. Due to the conflicting estates' claims to the Tether Funds, and although the JPLs have asked representatives at Tether to release them, Tether has not released the Tether Funds to the JPLs to date.

82. By asserting ownership over the Tether Funds, the Counterclaim Defendants have interfered with the JPLs' execution of their court-mandated duties as the Provisional Liquidators of FTX Digital's estate and have breached the Cooperation Agreement.

J. The Counterclaim Defendants Refuse to Cooperate with the JPLs on Restarting the International Platform

83. The Cooperation Agreement provides that "[t]he Parties will work together in good faith during the next six months (commencing [January 6, 2023]) in coordination with appropriate stakeholders in their respective proceedings to develop alternatives for the potential sale, reorganization or other monetization of (a) the international FTX.com platform [] and (b) cryptocurrency held or managed by the Chapter 11 Debtors in accordance with this Agreement and associated with the International Platform (and not traceable to customers of FTX US)." Cooperation Agreement, ¶ 6.

84. The Cooperation Agreement further provides that, "[e]ach Party shall consult reasonably and in good faith with the other Party . . . in connection with the asset recovery functions related to the International Platform for which it has primary responsibility, including without limitation . . . (a) the reasonableness of the asset recovery decisions for which it has a primary responsibility; (b) the settlement of intercompany claims; (c) the desirability or viability of a potential reorganization of the International Platform; and (d) the relative recovery of International Platform customers versus other creditors[.]" *Id.* ¶ 9.

85. The Counterclaim Defendants have been engaging with stakeholders regarding the International Platform.[4] *See* Apr. 12, 2023 Hr'g Tr. at 17:15-18 (Mr. Dietderich: "the options being considered include a restart of the exchange from an operational and a functional perspective"). Despite the Cooperation Agreement mandates, the Counterclaim Defendants have not involved FTX Digital in any such discussions and have failed to transmit information to the JPLs on the matters contemplated by the Cooperation Agreement. The Official Committee of Unsecured Creditors (the "**Committee**") has recently echoed similar issues with respect to the Counterclaim Defendants' lack of communications, transparency, and cooperation. *See Statement and Reservation of Rights of Official Committee of Unsecured Creditors Regarding Motion of Debtors for Entry of an Order Extending the Exclusive Periods During Which Only the Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof*, Case No. 22-11068-JTD [Dkt. No. 1227], ¶ 6 ("However, the Committee has often felt that the Debtors can and should provide the Committee and its members, in particular, with more notice of material actions and should allow more information to flow directly to the members of the Committee."). Indeed, at the April 12, 2023 hearing, the Court admonished the Counterclaim Defendants for their lack of transparency thus far. *See* Apr. 12, 2023 Hr'g Tr. at 24:1-7 ("I expect the debtors and the Committee to cooperate fully and there [to] be a free-flow of information between the two. I did not appoint an examiner because we have an independent Board of Directors and independent CEO running the debtors, so I expect that there will be an open and free-flow of information.").

[4] The Counterclaim Defendants' fee statements confirm the same. *See, e.g.*, *Notice of Filing of Monthly Staffing Report and Compensation Report by Owl Hill Advisory, LLC for the Period April 1, 2023, through April 30, 2023*, Case No. 22-11068-JTD [Dkt. No. 1523] (including the following entries: "04/04/2023: Review Sygnia work plan for exchange fortification and comment back to A&M;" "04/12/2023: Review term sheet for plan structuring exchange;" "04/14/2023: Review 2.0 next steps summary from PWP;" "04/17/2023: Review next steps and comment on FTX restart;" "04/19/2023: Review and finalize 2.0 reboot of exchange material for distribution;" "04/24/2023: Emails with PWP re 2.0 communication;" and "04/30/2023: Review and comment on 2.0 bidder list").

86. Although the Counterclaim Defendants promised to provide more transparency, they have not.

K. The Counterclaim Defendants Refuse to Cooperate with the JPLs on Foreign Law Customer Issues

87. The Cooperation Agreement provides that the parties will cooperate on issues regarding the determination of which customers of the FTX International Platform were customers of FTX Trading, FTX Digital, or both. Cooperation Agreement, ¶ 11. The Cooperation Agreement further provides that the parties will propose a framework for communication and cooperation between this Court and the Bahamas Court. *Id.* ¶¶ 18, 19(a).

88. The JPLs sought for months to work with the Counterclaim Defendants on coming up with a process for resolving issues relating to the identification and protection of FTX Digital's accountholders, customers, and creditors (the "**Foreign Law Customer Issues**"). For instance, on March 9, 2023, the JPLs sent the Counterclaim Defendants' counsel a draft application that they wished to file with the Bahamas Court, seeking the Bahamas Court's guidance on the Foreign Law Customer Issues (the "**Application**") as they related to FTX Digital's assets. On March 15, 2023, the JPLs held a telephonic conference with Mr. Ray and his counsel in an attempt to discuss a cooperative framework for resolving all Foreign Law Customer Issues, in accordance with this Court's Local Rules and the Cooperation Agreement. By these efforts, the JPLs intended to frame a process by which this Court and the Bahamas Court could resolve which questions would be addressed in which court, as is common practice in cross-border insolvencies like these. Yet, in contravention of the Cooperation Agreement, the Counterclaim Defendants refused outright to cooperate with the JPLs on either issue and have actively fought against the JPLs.

L. The Plaintiffs Sue the FTX Digital Defendants

89. Finally, the Cooperation Agreement provides that "[w]here one Party wishes to resolve a dispute . . . such Party *may upon reasonable notice to the other party* proceed with litigation[.]" Cooperation Agreement, ¶ 11 (emphasis added).

90. Without any meaningful engagement with the JPLs, on March 19, 2023, certain Counterclaim Defendants initiated this Adversary Proceeding. Compl. [Dkt. No. 1]. These Counterclaim Defendants filed the Amended Complaint on June 14, 2023. Amended Compl. [Dkt. No. 18].

91. The Adversary Proceeding requests declaratory judgments on the same issues that the JPLs had painstakingly identified and sought to resolve through a consensual cross-border cooperation protocol between the Bahamas Court and this Court. *See id.* At the center of many of these issues lies FTX Digital's rights and obligations under the New Terms of Service. *See id.*

92. The Plaintiffs never substantively discussed the Adversary Proceeding with the JPLs. Instead, they commenced this proceeding on one hour's notice to one of the JPLs' counsel.

93. Additionally, in contravention of the Recognition Order and FTX Digital's automatic stay, the Plaintiffs filed the Amended Complaint against FTX Digital and the JPLs. The Amended Complaint improperly seeks (i) a declaration from this Court that FTX Digital has no rights to its estate assets and property, and (ii) to avoid and recover transfers, either "made or attempted," of property "to or through" FTX Digital.

COUNTERCLAIM I: BREACH OF CONTRACT (MOONSTONE AND SILVERGATE ACCOUNTS)
(Against All Counterclaim Defendants)

94. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

95. The Counterclaim Defendants and the JPLs entered into the Cooperation Agreement on January 6, 2023, which was approved by this Court on February 9, 2023. The JPLs materially performed on all of their obligations under the Cooperation Agreement.

96. The Cooperation Agreement provides that "[t]he Parties agree that [FTX Digital] shall be primarily responsible for recovering value from (a) the assets and property in the name of [FTX Digital], including without limitation, all real and personal property and bank and security accounts in the name of [FTX Digital], [wherever] located." Cooperation Agreement, ¶ 4.

97. The Cooperation Agreement further provides that the Counterclaim Defendants "shall support the continuation of [FTX Digital's] provisional liquidation." *Id.* ¶ 12.

98. Since executing the Cooperation Agreement, the Counterclaim Defendants have actively interfered with FTX Digital's efforts to recover the property held in the Silvergate Accounts and Moonstone Account.

99. The Counterclaim Defendants have breached the Cooperation Agreement by affirmatively seeking to deprive the JPLs of assets and property held in FTX Digital's name.

100. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial assets needed to properly administer the FTX Digital estate in an amount no less than $151,000,000.

COUNTERCLAIM II: VIOLATION OF THE AUTOMATIC STAY AND RECOGNITION ORDER (MOONSTONE AND SILVERGATE ACCOUNTS)
(Against All Counterclaim Defendants)

101. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

102. The Recognition Order states that "[a]ll of the property of FTX Digital within the territorial jurisdiction of the United States is entrusted to the Joint Provisional Liquidators." Recognition Order, ¶ 6.

103. The Recognition Order also grants FTX Digital and the JPLs "all relief and protection afforded to foreign main proceeding under Section 1520 of the Bankruptcy Code . . . including application of the sections 1520(a) and Section 362 of the Bankruptcy Code stay to bar actions against FTX Digital and/or property of FTX Digital located within the territorial jurisdiction of the United States." *Id.* ¶ 4.

104. Section 1520(a)(1) of the Bankruptcy Code provides that upon the recognition of a foreign main proceeding, "sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(1). Section 362(a)(3) of the Bankruptcy Code operates as a "stay" of "any act" to "exercise control" over the property of the estate. *See* 11 U.S.C. § 362(a)(3).

105. The Counterclaim Defendants have interfered and continue to interfere with FTX Digital's efforts to recover the Moonstone Account and Silvergate Accounts, both of which are property of FTX Digital within the territorial jurisdiction of the United States. The Counterclaim Defendants have taken steps to convince the U.S. Government not to release the Moonstone Account and Silvergate Accounts to the JPLs and have conceded that they have been "working in parallel" with the U.S. Government to secure FTX Digital's funds held in its name.

106. By taking the foregoing acts, the Counterclaim Defendants violated the automatic stay, section 1520 of the Bankruptcy Code, and the Recognition Order.

107. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial assets needed to properly administer the FTX Digital estate.

COUNTERCLAIM III: VIOLATION OF THE AUTOMATIC STAY AND RECOGNITION ORDER (ADVERSARY PROCEEDING)
(Against Plaintiffs)

108. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

109. The Recognition Order granted FTX Digital and the JPLs "all relief and protection afforded to foreign main proceeding under Section 1520 of the Bankruptcy Code . . . including application of the sections 1520(a) and Section 362 of the Bankruptcy Code stay to bar actions against FTX Digital and/or property of FTX Digital located within the territorial jurisdiction of the United States." Recognition Order, ¶ 4.

110. Section 1520(a)(1) of the Bankruptcy Code provides that upon the recognition of a foreign main proceeding, "sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(1). Section 362(a)(1) of the Bankruptcy Code prohibits "the commencement . . . of a judicial, administrative, or other action or proceeding against the debtor[.]" 11 U.S.C. § 362(a)(1). The automatic stay also bars actions against non-debtors where there is such identity between the non-debtors and the debtor that a judgment against the non-debtor will in effect be a judgment against the debtor.

111. The Plaintiffs named FTX Digital and the JPLs as defendants in the Adversary Proceeding seeking control over FTX Digital's property through declaratory judgment and

avoidance actions. All allegations in the Amended Complaint against the JPLs are for actions the JPLs took in their capacity as FTX Digital's court-appointed representatives.

112. By taking the foregoing acts, the Plaintiffs violated the automatic stay, section 1520 of the Bankruptcy Code, and the Recognition Order.

113. As a result of the Plaintiffs' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial assets needed to properly administer the FTX Digital estate.

COUNTERCLAIM IV: BREACH OF CONTRACT (PROPCO)
(Against All Counterclaim Defendants)

114. The averments in paragraphs 1-93 are incorporated by references as if fully set forth herein.

115. The Counterclaim Defendants and the JPLs entered into the Cooperation Agreement on January 6, 2023, which was approved by this Court on February 9, 2023. The JPLs materially performed on all of their obligations under the Cooperation Agreement.

116. The Cooperation Agreement provides that "[t]he JPLs . . . shall take the lead in managing the properties, determining the appropriate strategy for the monetization of the properties, identifying buyers and conducting the marketing process, provided that the strategy, as well as the buyers and deal terms recommended by the JPLs, will be subject to approval by the Chapter 11 Debtors (such approval not to be unreasonably withheld or delayed)." Cooperation Agreement, ¶ 15.

117. The Cooperation Agreement further mandates that "either a liquidation proceeding with respect to PropCo will be opened in the Bahamas Court to run concurrently with the pending Chapter 11 case of PropCo or the Parties will determine another *mutually acceptable arrangement*

for the sale of the applicable properties free and clear of claims against such properties." *Id.* ¶ 15 (emphasis added).

118. The Counterclaim Defendants have breached the Cooperation Agreement by interfering with the JPLs' efforts to initiate a PropCo liquidation proceeding.

119. The Counterclaim Defendants have also breached the Cooperation Agreement by attempting to sell the PropCo properties without cooperating with the JPLs on a mutually acceptable arrangement for sale.

120. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial assets needed to properly administer the FTX Digital estate.

COUNTERCLAIM V: BREACH OF CONTRACT (INFORMATION SHARING)
(Against All Counterclaim Defendants)

121. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

122. The Counterclaim Defendants and the JPLs entered into the Cooperation Agreement on January 6, 2023, which was approved by this Court on February 9, 2023. The JPLs materially performed on all of their obligations under the Cooperation Agreement.

123. Subject to a mutually agreeable NDA, the Cooperation Agreement provides that the "Parties will share information in their possession concerning the matters contemplated by this Agreement." Cooperation Agreement, ¶ 22.

124. After entry of the NDA, the Counterclaim Defendants continue to refuse to provide the JPLs with (i) FTX Digital employee communications in the Counterclaim Defendants' possession; and (ii) complete AWS data of the FTX International Platform.

125. The Counterclaim Defendants have breached the Cooperation Agreement by refusing to share information in their possession concerning the matters contemplated by the Cooperation Agreement, namely, the Counterclaim Defendants' agreement to support the Provisional Liquidation of FTX Digital.

126. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial information needed to properly administer the FTX Digital estate.

COUNTERCLAIM VI: BREACH OF CONTRACT (TETHER FUNDS)
(Against All Counterclaim Defendants)

127. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

128. The Counterclaim Defendants and the JPLs entered into the Cooperation Agreement on January 6, 2023, which was approved by this Court on February 9, 2023. The JPLs materially performed on all of their obligations under the Cooperation Agreement.

129. The Cooperation Agreement provides that "[t]he Parties agree that [FTX Digital] shall be primarily responsible for recovering value from . . . (b) the approximately $45 million of [Tether] currently frozen in The Bahamas." Cooperation Agreement, ¶ 4. The Cooperation Agreement further provides that the Counterclaim Defendants "shall support the continuation of [FTX Digital's] provisional liquidation." *Id.* ¶ 12.

130. The Counterclaim Defendants have attempted to gain access and control over the Tether Funds.

131. As a result, Tether has refused to release the Tether Funds to the JPLs.

132. The Counterclaim Defendants have breached the Cooperation Agreement by affirmatively seeking to deprive FTX Digital of the Tether Funds.

133. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial assets needed to properly administer the FTX Digital estate, in an amount no less than $45,000,000.

COUNTERCLAIM VII: BREACH OF CONTRACT (FTX INTERNATIONAL PLATFORM)
(Against All Counterclaim Defendants)

134. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

135. The Counterclaim Defendants and the JPLs entered into the Cooperation Agreement on January 6, 2023, which was approved by this Court on February 9, 2023. The JPLs materially performed on all of their obligations under the Cooperation Agreement.

136. The Cooperation Agreement provides that "[t]he Parties will work together in good faith during the next six months (commencing on the date hereof) in coordination with appropriate stakeholders in their respective proceedings to develop alternatives for the potential sale, reorganization or other monetization of (a) the international FTX.com platform [] and (b) cryptocurrency held or managed by the Chapter 11 Debtors in accordance with this Agreement and associated with the International Platform (and not traceable to customers of FTX US)." Cooperation Agreement, ¶ 6.

137. The Cooperation Agreement further provides that "[e]ach Party shall consult reasonably and in good faith with the other Party . . . in connection with the asset recovery functions related to the International Platform for which it has primary responsibility, including without limitation . . . (a) the reasonableness of the asset recovery decisions for which it has a primary responsibility; (b) the settlement of intercompany claims; (c) the desirability or viability

of a potential reorganization of the International Platform; and (d) the relative recovery of International Platform customers versus other creditors." *Id.* ¶ 9.

138. At the hearing before the Court on April 12, 2023, counsel for the Counterclaim Defendants stated that "the options being considered include a restart of the exchange from an operational and a functional perspective." Apr. 12, 2023 Hr'g Tr. at 17:15-18.

139. To date, the JPLs have not been involved in a single discussion regarding a potential restart of any of the FTX exchanges.

140. The Counterclaim Defendants have breached the Cooperation Agreement by refusing to include the JPLs in any discussions regarding a restart or reorganization of the International Platform, as contemplated by the Cooperation Agreement.

141. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they have been deprived of crucial assets needed to properly administer the FTX Digital estate.

COUNTERCLAIM VIII: BREACH OF CONTRACT (ADVERSARY PROCEEDING)
(Against Plaintiffs)

142. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

143. The Counterclaim Defendants and the JPLs entered into the Cooperation Agreement on January 6, 2023, which was approved by this Court on February 9, 2023. The JPLs materially performed on all of their obligations under the Cooperation Agreement.

144. The Cooperation Agreement provides that "[t]he Parties will work together and in good faith to determine ownership of assets that are subject to competing claims and to ensure that any court process(es) relating to an adjudication of any dispute are conducted as efficiently as

possible" and "[w]here one Party wishes to resolve a dispute . . . such Party *may upon reasonable notice to the other party* proceed with litigation[.]" Cooperation Agreement, ¶ 11 (emphasis added).

145. On March 19, 2023, without any significant engagement with the JPLs, the Plaintiffs initiated the Adversary Proceeding. The Plaintiffs did not provide the JPLs with any prior notice of the adversary proceeding.

146. The Plaintiffs have breached the Cooperation Agreement by bringing the Adversary Proceeding without notice to the JPLs and by failing to support the Provisional Liquidation.

147. As a result of the Counterclaim Defendants' actions, the FTX Digital Defendants have been damaged insofar as they must defend themselves against the Counterclaim Defendants' spurious allegations, which will incur significant costs and distract the FTX Digital Defendants from focusing on the Provisional Liquidation.

COUNTERCLAIM IX: DECLARATORY JUDGMENT REGARDING TERMS UNDER WHICH DIGITAL ASSETS AND FIAT WERE HELD BY FTX DIGITAL IN THE UNITED STATES FOR THE BENEFIT OF CUSTOMERS
(Against All Counterclaim Defendants)

148. The averments in paragraphs 1-93 are incorporated by reference as if fully set forth herein.

149. A real and present controversy exists as to FTX Digital's rights and obligations under the Terms of Service, including the rights of FTX Digital to digital assets and fiat currently held in the United States for its customers.

150. Upon a finding in FTX Digital's favor on the Foreign Law Customer Issues, the FTX Digital Defendants are further entitled to an order declaring the terms under which FTX Digital held digital assets and fiat in the United States for the benefit of its customers under English law.

PRAYER FOR RELIEF

WHEREFORE, the FTX Digital Defendants request that this Court grant the following relief against the Counterclaim Defendants:

1. Enter an order that the Counterclaim Defendants have breached the Cooperation Agreement;

2. Enter an order that the Counterclaim Defendants have violated FTX Digital's automatic stay and the Recognition Order;

3. Enter an order declaring the terms under which FTX Digital held all digital assets and fiat in the United States;

4. Award the FTX Digital Defendants damages as a post-petition administrative claim against each of the Counterclaim Defendants for an amount to be determined at trial; and

5. Award the FTX Digital Defendants all other relief, at law or equity, to which they may be entitled, or that this Court may deem just and proper.

Dated: July 12, 2023

/s/ Kevin Gross

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20, Defendants.	Adv. Pro. No. 23-50145 (JTD) **Re: Adv. Docket Nos. 11, 18 & 25**

MOTION OF FTX DIGITAL MARKETS LTD. AND THE JOINT PROVISIONAL LIQUIDATORS TO DISMISS COUNTS VII-IX OF THE AMENDED COMPLAINT AND TO ABSTAIN FROM RULING ON COUNT VI

FTX Digital Markets Ltd. ("**FTX Digital**"), Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators of FTX Digital and foreign representatives of the Provisional Liquidation of FTX Digital (the "**JPLs**" and, together with FTX Digital, the "**FTX Digital Defendants**"), submit this motion (the "**Motion**") requesting that the Court (i) dismiss Counts VII-IX of the Amended Complaint [Adv. Docket No.

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Chapter 11 Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

18] (the "**Amended Complaint**") filed in the above captioned adversary proceeding by Alameda Research LLC, Alameda Research Ltd., FTX Trading Limited, West Realm Shires, Inc., and West Realm Shires Services, Inc., and (ii) abstain with respect to Count VI of the Amended Complaint. In support of this Motion, the FTX Digital Defendants rely upon the accompanying *Memorandum in Support of Motion of FTX Digital Markets Ltd. and the Joint Provisional Liquidators to Dismiss Counts VII-IX of the Amended Complaint and to Abstain from Ruling on Count VI* (the "**Memorandum**"),[2] filed contemporaneously herewith.

Pursuant to Rule 7012 and Local Rule 7012-1, the FTX Digital Defendants consent to the entry of a final order or judgment by the Court in connection with this Motion on Counts VII-IX in the Amended Complaint if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. The FTX Digital Defendants do not consent to the entry of a final order or judgment by this Court on Count VI of the Amended Complaint.

WHEREFORE, for the reasons set forth in the Memorandum, the FTX Digital Defendants respectfully request that the Court grant this Motion and enter an order substantially in the form attached hereto as **Exhibit A** dismissing Counts VII-IX of the Amended Complaint with prejudice, abstaining with respect to Count VI of the Amended Complaint, and granting any such other and further relief as the Court deems just and proper.

[2] Capitalized terms not defined herein have the meaning ascribed to them in the Memorandum.

Dated: July 12, 2023
Wilmington, Delaware

/s/ *Kevin Gross*

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Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20, Defendants.	Adv. Pro. No. 23-50145 (JTD) **Re: Adv. Docket Nos. 11, 18 & 25**

ORDER GRANTING MOTION OF FTX DIGITAL MARKETS LTD. AND THE JOINT PROVISIONAL LIQUIDATORS TO DISMISS COUNTS VII-IX OF THE AMENDED COMPLAINT AND TO ABSTAIN FROM RULING ON COUNT VI

Upon the *Motion of FTX Digital Markets Ltd. and the Joint Provisional Liquidators to Dismiss Counts VII-IX of the Amended Complaint and to Abstain from Ruling on Count VI* (the "**Motion**");[2] and due and proper notice of the Motion having been provided; and the Court having reviewed the Motion, the Memorandum, any responses to the Motion, and any reply in further support of the Motion; and the Court having determined that the legal and factual bases set forth

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Chapter 11 Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

in the Motion and Memorandum establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. Counts VII, VIII, and IX of the Amended Complaint are dismissed with prejudice.

3. The Court shall abstain from ruling on Count VI of the Amended Complaint.

4. The FTX Digital Defendants are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

5. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20 Defendants.	Adv. Pro. No. 23-50145 (JTD)

MEMORANDUM IN SUPPORT OF MOTION OF FTX DIGITAL MARKETS LTD. AND THE JOINT PROVISIONAL LIQUIDATORS TO DISMISS COUNTS VII-IX OF THE AMENDED COMPLAINT AND TO ABSTAIN FROM RULING ON COUNT VI

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Chapter 11 Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

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MISCELLANEOUS

FTX Digital Markets Ltd. ("**FTX Digital**"), Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators of FTX Digital and foreign representatives of the Provisional Liquidation of FTX Digital (the "**JPLs**" and, together with FTX Digital, the "**FTX Digital Defendants**"), submit this memorandum of law (the "**Memorandum**") in support of their motion to dismiss Counts VII-IX and to abstain with respect to Count VI of the amended complaint (the "**Amended Complaint**") filed in the above-captioned adversary proceeding by Alameda Research LLC ("**Alameda Research**"), Alameda Research Ltd., FTX Trading Limited ("**FTX Trading**"), West Realm Shires, Inc. and West Realm Shires Services, Inc. ("**FTX US**"; collectively, "**Plaintiffs**" or "**U.S. Debtors**"). The FTX Digital Defendants respectfully state as follows:

PRELIMINARY STATEMENT

1. As this Court recently noted, there is a pressing need for this Court, the JPLs, and the U.S. Debtors to address certain of the key property ownership issues framed in this Adversary Proceeding. Simply, "you can't confirm [a U.S.] plan until we know whose assets they are." June 9 Hr'g Tr. at 172:13-19. Notwithstanding, the U.S. Debtors are still foot-dragging.

2. After they initiated this Adversary Proceeding in March, the parties met and conferred regarding an appropriate set of procedures for promptly addressing the claims asserted in the initial complaint. During that meeting, the JPLs requested the U.S. Debtors dismiss certain extraneous counts without prejudice, due to their numerous procedural and factual defects. The U.S. Debtors declined. So, on May 8, 2023, the FTX Digital Defendants filed their initial motion to dismiss (the "**Initial Motion to Dismiss**") formally addressing many of the issues that they had already identified during the meet and confer. Unexpectedly (as the issues had all previously been discussed with and rejected by them)—albeit consistent with their laconic attitude towards the

dispute—on the last day for them to respond to the Initial Motion to Dismiss, the U.S. Debtors withdrew their original complaint and filed the Amended Complaint.

3. As set forth below, despite the fact that the U.S. Debtors afforded themselves months to cure the fatal pleading defects identified by the FTX Digital Defendants in their April meet and confer and again in the Initial Motion to Dismiss, they did nothing to substantively change their pleading. A comparison of the U.S. Debtors' original complaint to the Amended Complaint (attached to the Chase Declaration as Exhibit A) indisputably demonstrates that the U.S. Debtors hardly made any effort to expand their allegations, fix their pleading defects, or state cognizable claims. In fact, aside from adding Count VI (which inappropriately concerns property of FTX Digital outside of this Court's *in rem* jurisdiction), the U.S. Debtors' decision to amend appears to be simply another attempt to delay resolution of the key property ownership issues. As discussed below, the U.S. Debtors' failure to substantively amend their initial allegations is grounds for dismissing Counts VII-IX with prejudice.

4. Delaying resolution of these issues any further is inappropriate under the circumstances. Accordingly, despite the fact that the U.S. Debtors' various declaratory judgment claims still have fatal flaws (most notably, the U.S. Debtors' refusal to join any customers to their claims regarding the Terms of Service), the FTX Digital Defendants are answering those claims so that the parties can begin the resolution process. This Motion is limited to seeking dismissal of the avoidance action claims set forth in Counts VII to IX of the Amended Complaint, as well as the one declaratory judgment claim (Count VI) that is directed at property of FTX Digital plainly within the *in rem* jurisdiction of the Bahamian Court. The Court should grant the relief requested herein as to those claims.

5. As described below in Section I, all of these counts are a legal nullity because they were filed in clear violation of FTX Digital's automatic stay. This Court has already recognized FTX Digital as a debtor in a foreign main proceeding, and upon entry of the Recognition Order (defined below), section 1520 of the Bankruptcy Code, among other things, expressly provides FTX Digital and the JPLs with the benefit of all the protections of section 362. Having secured no relief from that stay, these counts are a clear and willful violation of that stay. In addition, the claims brought provocatively against the JPLs (as opposed to FTX Digital) also fail because black letter law provides that claims against court-appointed fiduciaries cannot be brought without permission of the court that appointed those individuals. The U.S. Debtors still have not attempted to secure that relief from The Bahamas Court, even in the weeks after the issue was first raised by the JPLs.

6. But, even if the Court looked past the impropriety of the U.S. Debtors having violated the automatic stay and having sued the JPLs without leave, as set forth in Section II, the avoidance claims framed in the Amended Complaint should nonetheless be dismissed with prejudice because they still suffer from numerous uncured pleading defects and therefore fail to state a claim for relief. Finally, as set forth in Section III, this Court should abstain from hearing Count VI because that claim exclusively concerns property in FTX Digital's possession outside of the United States and is, therefore, plainly within the *in rem* jurisdiction of the Bahamian Court.

7. The FTX Digital Defendants respectfully request that this Court grant the Motion.

BACKGROUND

I. FTX Trading

8. FTX Trading, a U.S. Debtor, was incorporated on April 2, 2019 under the laws of Antigua and Barbuda. *See* Am. Compl. ¶¶ 15, 22. FTX Trading was originally based, along with

the rest of the FTX Group[2] in Hong Kong, China. *See* Chase Decl. Ex. B.[3] Initially, FTX Trading was responsible for running FTX's international digital asset exchange platform, through which the FTX Group ultimately transacted with approximately 7.6 million customers all located outside the United States (the "**International Customers**"). 'This Company Was Uniquely Positioned to Fail:' FTX Group CEO John Ray Testimony, YOUTUBE, at 21:25-22:00, 27:50-28:10; 1:18:40-1:19:00 (Dec. 13, 2022) ("**Ray Testimony**"); *Declaration of John J. Ray III in Support of the Chapter 11 Petitions and First Day Pleadings* [Dkt. No. 24], ¶ 33 ("The FTX.com platform is not available to U.S. Users").

II. FTX Digital

9. The Commonwealth of The Bahamas was one of the first jurisdictions to implement a regulated exchange system for cryptocurrency (the "**DARE Act**"), which appealed to the FTX Group for its ability to attract institutional funds. Am. Compl. ¶ 17. In response to the passage of the DARE Act, beginning in the latter half of 2021, the FTX Group publicly moved its headquarters from Hong Kong to The Bahamas. *See* First Day Hr'g. at 28:12-15 ("the company . . . went to Hong Kong . . . it went to the Bahamas"). FTX's relocation to The Bahamas was substantial. *See* Chase Decl. Ex. C (describing the plan for FTX headquarters to sit on 4.95 acres with numerous luxury structures and for seven hundred FTX employees to eventually live and work in The Bahamas).

10. In July 2021, FTX Digital was incorporated in The Bahamas. FTX Digital was registered as a Digital Asset Business ("**DAB**") under the DARE Act on September 10, 2021. Am. Compl. ¶ 17. As a registered DAB, FTX Digital was also a Digital Asset Service Provider. FTX

[2] Capitalized terms not defined herein have the meaning ascribed to them in the Amended Complaint.
[3] In support of the Motion and this Memorandum, FTX Digital and the JPLs rely upon and incorporate by reference the Declaration of Ashley Rona Chase, dated July 12, 2023 (the "**Chase Declaration**") filed simultaneously herewith.

Digital was and is the only FTX Group entity licensed in The Bahamas to run the FTX International Platform for most of the products on the platform, which constituted approximately 90% of the trades and over $1 billion in fees.[4] Under the terms of service uploaded to the FTX.com site on May 13, 2022 ("**New Terms of Service**"), any International Customer who accessed an existing account or created a new account on or after May 13, 2022 agreed that their account relationship would be with FTX Digital.[5]

11. Six months later, on November 10, 2022, the Securities Commission of The Bahamas suspended FTX Digital's registration and petitioned The Bahamas Court for the provisional liquidation of FTX Digital, which The Bahamas Court granted (the "**Provisional Liquidation**"). The Bahamas Court appointed Brian Simms KC as provisional liquidator that day. On November 14, 2022, the Bahamas Court appointed Kevin G. Cambridge and Peter Greaves as additional joint provisional liquidators. Under the Provisional Liquidation order, the JPLs displaced FTX Digital's officers and directors and were obligated to preserve and maximize the value of FTX Digital's assets for the benefit of creditors. On November 11 and November 14, the U.S. Debtors, commenced these chapter 11 cases.

III. Procedural History

12. On January 6, 2023, the JPLs and each of the U.S. Debtors entered into a cooperation agreement (the "**Cooperation Agreement**"). *See* Settlement and Cooperation

[4] By way of context, FTX Trading could not apply for a license under the DARE Act because, after the migration of regulated products to FTX Digital, FTX Trading remained the provider for certain products that could not be registered in The Bahamas. The unregulated products provided by FTX Trading constituted a minority of products on the platform.

[5] *See generally Motion of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay Does Not Apply to, or in the Alternative Relief from the Stay for Filing of the Application in the Supreme Court of the Commonwealth of The Bahamas Seeking Resolution of Non-US Law and Other Issues* [Dkt. No. 1192] ("**JPLs' Stay Motion**"); *see also* Chase Decl. Ex. D at 1.3.

Agreement, dated January 6, 2023, Case No. 22-11068 [Dkt No. 402], Exhibit 1.[6] In accordance with their obligations under the Cooperation Agreement and with the hope of achieving an efficient resolution of the legal issues concerning the identification and protection of FTX Digital's accountholders, customers, and creditors (the "**Non-U.S. Law Customer Issues**"), the JPLs sought for months to jointly tee up a legal process for accountholder determinations with the U.S. Debtors. The JPLs' attempts culminated in an unsuccessful meet and confer with the U.S. Debtors regarding the Non-U.S. Law Customer Issues on March 15, 2023. The following Sunday, March 19, 2023, the U.S. Debtors commenced this Adversary Proceeding, with an hour's notice to the JPLs' counsel. The U.S. Debtors sought neither permission from The Bahamas Court to assert claims against the JPLs nor to lift FTX Digital's stay in the chapter 15 case.[7] On March 29, 2023, the JPLs filed their Stay Motion to commence a proceeding in The Bahamas in an attempt to jointly resolve the U.S. Law Customer Issues. [Dkt. No. 1192].

13. On April 5, 2023, at the JPLs' request, the JPLs and the U.S. Debtors met and conferred regarding the Adversary Proceeding. During that conference, among other things, the JPLs requested that the U.S. Debtors dismiss or stay prosecution of the avoidance claims without prejudice. The U.S. Debtors declined.

14. On May 8, 2023, the FTX Digital Defendants filed their Initial Motion to Dismiss because, among other things, the Adversary Proceeding was void *ab initio* as a violation of FTX Digital's automatic stay. *See* [Dkt. No. 7]. In the five weeks after the JPLs filed their Initial

[6] This Court approved the Cooperation Agreement on February 9, 2023. [Dkt. No. 683]. The Bahamas Court also approved the Cooperation Agreement.

[7] Similar to the Bankruptcy Code, the Companies Winding Up Amendment Act of The Bahamas §§ 192-93 imposes a stay in connection with FTX Digital's liquidation proceedings, which has extraterritorial effect and extends to proceedings against the assets of the company in liquidation. The U.S. Debtors made no attempt to comply with those procedures either.

Motion to Dismiss, the U.S. Debtors still did not seek any judicial permission to lift the automatic stay to pursue the Adversary Proceeding.

15. On June 9, 2023, while the clock on the U.S. Debtors' response deadline was running, this Court denied the JPLs' Stay Motion but, in so doing, acknowledged that "this question about *in rem* jurisdiction begs the question that the assets that are held in the Bahamas, the Bahamian Court has control over them; they have *in rem* jurisdiction." June 9 Hr'g. Tr. at 164:13-16. This Court elaborated,

> [T]he Bahamian Court is free to ignore any ruling I make, whether or not the assets belong to the U.S. debtors or the Bahamian debtors. And they can go forward and have their own hearing and make a ruling on how that's going to play out for the assets that they hold. So the case is begging for some kind of a protocol between the parties to resolve that issue alone. I mean, we're going to end up – there's a possibility it could end up with inconsistent rulings in both courts and that might happen if we have a protocol or not. But at least I'm going to order the JPLs and the debtors to mediate the issue.[8]

Id. at 168:23-169:11.

16. On June 14, 2023, the last day to respond, the U.S. Debtors filed the Amended Complaint. As noted, a blackline comparing the original complaint to the Amended Complaint is attached as Exhibit A to the Chase Declaration. And, as the Court can see, few material changes were made to respond to issues raised in the FTX Digital Defendants' Initial Motion to Dismiss.

ARGUMENT

I. The Chapter 5 Claims Are Void

17. Before addressing the many pleading deficiencies in the U.S. Debtors' Amended Complaint, the fraudulent conveyance and related claims in Counts VII-IX (collectively, the "**Chapter 5 Claims**") cannot currently proceed at all.

[8] To date, and despite repeated requests from the JPLs to do so, the U.S. Debtors have still not engaged on the terms of an appropriate protocol, instead maintaining their position that each and every issue conceivably affecting the U.S. Debtors' cases must proceed exclusively in this Court.

A. The Chapter 5 Claims Violate FTX Digital's Automatic Stay and the Chapter 15 Recognition Order

18. *First*, the U.S. Debtors' assertion of the Chapter 5 Claims is void as a direct, willful violation of FTX Digital's automatic stay, as provided for by sections 1520 and 362 of the Bankruptcy Code and recognized in the chapter 15 Recognition Order. *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, Case No. 22-11217 [Dkt. No. 129] (the "**Recognition Order**"). The Recognition Order states that "[a]ll relief and protection afforded to foreign main proceedings under section 1520 of the Bankruptcy Code is hereby granted to the Bahamian Provisional Liquidation, FTX Digital, FTX Digital's property located in the United States, and the Joint Provisional Liquidators, as applicable, ***including application of the sections 1520(a) and 362 of the Bankruptcy Code stay to bar actions against FTX Digital*** and/or property of FTX Digital located within the territorial jurisdiction of the United States upon entry of this Order, subject in each case to Paragraphs 9 and 15 below." *Id.* ¶ 4 (emphasis added). The U.S. Debtors agreed to the form of the Recognition Order before it was submitted for entry. *See id.* ¶ G.

19. Fewer than five weeks later, the U.S. Debtors commenced the Adversary Proceeding in their chapter 11 cases in clear and knowing violation of section 362(a), and, therefore, section 1520 of the Bankruptcy Code. *See* 11 U.S.C. § 362(a)(1) (prohibiting the "commencement or continuation. . . of a judicial, administrative, or other action or proceeding against the debtor. . ."); 11 U.S.C. § 362(a)(3) (prohibiting "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"); *see also* 11 U.S.C § 1520(a) (automatically affording all the protections of section 362 upon recognition). The Chapter 5 Claims each name FTX Digital and the JPLs as defendants in violation of section 362(a)(1). The Chapter 5 Claims also explicitly seek to avoid and recover—*i.e.*, obtain

possession of and exercise control over—any property that was transferred "to or through" FTX Digital (without meaningful specification as to what that property is). Am. Compl. ¶¶ 117-134. These are clear violations of section 362(a) and an attack on the very purpose of chapter 15. *See In re ABC Learning Centres Ltd.*, 445 B.R. 318, 343 (Bankr. D. Del. 2010) ("The imposition of an automatic stay upon recognition of a foreign main proceeding is necessary to ensure that the goals of Chapter 15—including cooperation between U.S. courts and foreign courts, fair and efficient administration of cross-border insolvencies, and the protection and maximization of the value of the debtors'[] assets—are met.").

20. The automatic stay also renders the (duplicative) claims alleged against the JPLs individually void because all of the allegations in the Amended Complaint against the JPLs are limited to actions the JPLs took in their capacity as FTX Digital's court-appointed representatives. *See In re Irish Bank Resol. Corp. Ltd.*, No. 13-12159-CSS, 2019 WL 4740249, at *5 (D. Del. Sept. 27, 2019) (recognizing that the automatic stay bars actions against non-debtors where "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor") (quoting *McCartney v. Integra Nat. Bank North*, 106 F.3d 506, 510 (3d Cir. 1997)). Extending the protections of the automatic stay to the JPLs "is essential to [FTX Digital's] efforts of reorganization." *Id.* at *5-6 (acknowledging that claims against foreign representatives would "have an immediate adverse economic consequence for the debtor's estate" by, for instance, threatening the loss of debtor funds or personnel). Further, any costs incurred in defending the JPLs in the Adversary Proceeding, as well as any money judgment entered against the JPLs, would be indemnified out of FTX Digital's assets, making the claims

asserted against them de facto actions against FTX Digital. The Chapter 5 Claims are thus void *ab initio*.

B. The Claims Against The JPLs Are Improper and Should Be Dismissed with Prejudice

21. *Second*, the claims against the JPLs are also improper without leave from The Bahamas Court. For nearly 150 years, courts have recognized that "before suit is brought against a receiver leave of the court by which he was appointed must be obtained." *Barton v. Barbour*, 104 U.S. 126, 127 (1881);[9] *In re VistaCare Grp., LLC*, 678 F.3d 218, 225 (3d Cir. 2012) (rejecting the bankruptcy court's description of the *Barton* doctrine as "antiquated and probably not controlling" and holding that it "has continuing validity"). The *Barton* doctrine was created to protect court-appointed fiduciaries, such as liquidators, from precisely what the U.S. Debtors attempt to do here: (a) distract the JPLs from fulfilling their mandate to maintain the value of FTX Digital's assets for the benefit of its creditors, and (b) impose liability on the JPLs for acting within this duly authorized mandate. In the absence of the *Barton* doctrine, individuals—like the JPLs—would be deterred from accepting similar fiduciary appointments. *See VistaCare Grp.*, 678 F.3d. at 230 (observing the "burden[]" a trustee would face in having to defend against suits in other courts and that, without the appointing court's consent to sue the trustee, "trusteeship would become a 'more irksome duty,' thereby discouraging qualified people from serving").

22. The JPLs were appointed by The Bahamas Court and are the functional equivalent of trustees appointed in a U.S. chapter 7 or chapter 11 proceeding. The U.S. Debtors failed to seek

[9] In *Barton*, the plaintiff was injured during a train derailment when the railroad was operated under a receiver appointed by a state court. The plaintiff sued the receiver for negligence. The Supreme Court held that "a court of another State [does] not [have] jurisdiction, without leave of the court by which the receiver was appointed, to entertain a suit against [the receiver]." *Barton*, 104 U.S. at 137. The Court focused on the "advantage" a plaintiff would gain over other creditors if the rule were otherwise and noted that "it would become impossible for the [appointing] court to discharge its duty to preserve the property and distribute its proceeds among those entitled to it according to their equities and priorities." *Id.* at 136.

leave to file the Amended Complaint from the JPLs' appointing court as required by the *Barton* doctrine.

23. The Chapter 5 Claims should also be dismissed as alleged against the JPLs because there is not a single allegation connecting the JPLs to the purported *pre-petition* fraudulent transfers. The JPLs were not appointed to serve as provisional liquidators of or otherwise involved with FTX Digital until November 10 and November 14, 2022—long after the alleged transfers took place. *See* Am. Compl. ¶¶ 123, 129 (alleging the transfer took place within two years of the Petition Date). Moreover, the U.S. Debtors allege that FTX Digital—not the JPLs—is the transferee of the undescribed transfers. *See id.* ¶ 133. The U.S. Debtors did not (and could not) allege that the JPLs are "transferees." *See id.* (FTX Digital "was the initial transferee of the Avoidable Transfers and one or more of the J. Doe defendants may have been the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfers were made"). As such, the Chapter 5 Claims against the JPLs should be dismissed with prejudice at this time.

II. The Chapter 5 Claims Should Be Dismissed For Failure To State A Claim

24. Even if the filing of the Chapter 5 Claims were not void, they still fail to state a claim for relief under applicable law.[10] Indeed, the Chapter 5 Claims remain nothing more than a tactical effort to manipulate the resolution of which debtor owns what property.

25. As an initial matter, all of these claims can and should be dismissed with prejudice because the U.S. Debtors were "put on notice as to the deficiencies in [their] complaint, but chose not to resolve them." *See Krantz v. Prudential Invs. Fund Mgmt. LLC*, 305 F.3d 140, 144 (3d Cir.

[10] FTX US—the U.S. customer-facing arm of the FTX Group—has not alleged any standing to bring the Chapter 5 Claims. *See Reilly v. Ceridian Corp.*, 664 F.3d 38, 41 (3d Cir. 2011) ("It is the plaintiffs' burden, at the pleading stage, to establish standing.").

2002) (affirming denial of leave to amend complaint because plaintiff was "on notice" of the basis for granting the motion to dismiss—which was identified in the defendant's original motion to dismiss and not rectified in plaintiff's amended complaint—and noting that "[a]mong the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility") (citing *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir.2000) and *Rolo v. City Investing Co. Liquidating Trust*, 155 F.3d 644, 654 (3d Cir.1998)); *see also Natale v. United States*, No. CIV.A. 13-2339, 2014 WL 1281224, at *11, n.9 (E.D. Pa. Mar. 28, 2014) ("The plaintiff filed the amended complaint after having the benefit of reviewing this same argument . . . when it was presented in the defendants' initial motion to dismiss. Because the plaintiff failed to cure this defect in the amended complaint, the Court will dismiss this claim with prejudice.").

A. Counts VII and VIII Are Not Plausible

26. "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *In re Cred Inc.*, No. 20-12836 (JTD), 2023 WL 2940483, at *1 (Bankr. D. Del. Apr. 13, 2023) (quotations omitted) (dismissing fraudulent transfer claims under the *Iqbal* standards). To meet this standard, "[a] complaint has to 'show' [] an entitlement [to relief] with its facts" and cannot rely on "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* (internal quotations and citations omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, n.3 (2007) (Rule 8(a) requires a "showing, rather than a blanket assertion, of entitlement to relief."). Here, none of the Chapter 5 Claims state a plausible claim for relief and all are therefore ripe for dismissal.

27. The Chapter 5 Claims rely on the U.S. Debtors' bare allegations that every unspecified "transfer" undertaken by the FTX Group to migrate to The Bahamas was in an effort to defraud International Customers. *See, e.g.*, Am. Compl. ¶¶ 23, 25, 28, 64, 121, 128. These

allegations are conclusory "blanket assertions" that lack the requisite showing of entitlement to relief to satisfy Rule 8. *See Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016) ("allegations that . . . are no more than conclusions, are not entitled to the assumption of truth") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). Moreover, the U.S. Debtors' blanket assertion that "all transactions" are avoidable—without specifying *what* transfers the U.S. Debtors seek to avoid—fails to put the FTX Digital Defendants on adequate notice of the claims against them. *See Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008) (there will be times that "the factual detail in a complaint is so undeveloped that it does not provide a defendant the type of notice of claim which is contemplated by Rule 8") (citing *Twombly*, 550 U.S. 544 (2007) and *Erickson v. Pardus*, 551 U.S. 89 (2007)). To survive this Motion, Counts VII and VIII had to have provided the FTX Digital Defendants with, at minimum, notice as to what transfers were made to whom and when the subject transfers were allegedly made. *See Cred Inc.,* 2023 WL 2940483, at *18-*19 (finding allegations of fraudulent transfers insufficient because, among other things, "the individual transfers are not identified by date or amount").

28. Finally, despite the issue being framed in the Initial Motion to Dismiss, the Chapter 5 Claims still make no practical sense. If the "intent" of FTX management in moving the FTX Group from Hong Kong was to defraud the International Customers, why then did the conspirators choose to move from a market without any comprehensive regulatory certainty to one of the most comprehensive regulatory regimes on the planet and the only one which actually shut down the enterprise?

B. Only Actual Transfers Are Actionable Under Chapter 5

29. In each of the Chapter 5 Claims, the U.S. Debtors apparently seek to avoid "transfers" that may have been "attempted" but not consummated. *See*, *e.g.*, Am. Compl. ¶¶ 63-

64, 119, 127-28. Allegations of an intended, but not executed, transfer fail as a matter of law, as only actual "transfers" matter. *See In re Plassein Int'l Corp.*, 366 B.R. 318, 326 (Bankr. D. Del. 2007), *aff'd*, 388 B.R. 46 (D. Del. 2008) (dismissing § 544 claim invoking Delaware law "[s]ince no Debtor made a transfer, there is no legal basis for any fraudulent conveyance claim"); *McDonnell v. Gilbert (In re Gilbert)*, 642 B.R. 687, 699, 703 (Bankr. D.N.J. 2022) (dismissing § 548 claims because trustee did "not sufficiently plead that there was a 'transfer'").

C. The Chapter 5 Claims Lack Adequate Specificity

30. The Chapter 5 Claims also fail because the U.S. Debtors "merely recite[] the statutory language of § 548(a) of the Bankruptcy Code," which does not meet Rule 8's pleading standard as a matter of law.[11] *See In re Pillowtex Corp.*, 427 B.R. 301, 311 (Bankr. D. Del. 2010) (dismissing constructive fraudulent transfer claim for reciting the statute without providing any factual support); *In re Sunset Aviation, Inc*., 468 B.R. 641, 650 (Bankr. D. Del. 2011) ("a claim for the avoidance of a transfer under § 548 is insufficient when it simply alleges the statutory elements of a constructive fraud action under section 548(a)(1)(B)") (citation omitted); *In re Glob. Link Telecom Corp.*, 327 B.R. 711, 718 (Bankr. D. Del. 2005) (applying a more liberal standard than Rule 9(b) and dismissing constructive fraudulent transfer claim for reciting the statute without "information on the Debtors' financial status or the value of what was received in exchange"). Here, as demonstrated in the following chart, the U.S. Debtors breached this cardinal rule by

[11] The Bankruptcy Courts in this District have not consistently determined whether Rule 9(b)'s heightened pleading standard applies to constructive fraudulent transfer claims. *Compare OHC Liquid. Tr. v. Nucor Corp. (In re Oakwood Homes Corp.)*, 325 B.R. 696, 698 (Bankr. D. Del. 2005) (finding that Rule 9(b) applies to a claim under §§ 544 or 548 "whether it is based upon actual or constructive fraud") (citing cases) *with In re Pillowtex Corp.*, 427 B.R. 301, 310 (Bankr. D. Del. 2010) ("courts in this district have held that claims of constructive fraud (i.e., fraudulent transfers) are evaluated using Rule 8(a)(2)") (citing *Mervyn's LLC v. Lubert–Adler Group IV, LLC (In re Mervyn's Holdings, LLC)*, 426 B.R. 488, 495 (Bankr. D. Del. 2010)). The Court need not resolve this issue because all Chapter 5 Claims fail even under Rule 8's more lenient standard.

simply parroting section 548 in Count VII without providing any details of the who, what, where, when, and why regarding any specific alleged "transfer:"

11 U.S.C. § 548(a)(1)(B)	**Amended Complaint, Count VII**
"The trustee may avoid any transfer . . . that was made or incurred on or within 2 years before the date of the filing of the petition. . ."	"The transfers were made within two years of the Petition Date."
"if the debtor voluntarily or involuntarily (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and"	"The Plaintiffs did not receive reasonably equivalent value in exchange for the transfers of Plaintiffs' property to or through [FTX Digital] by Plaintiffs. Indeed, Plaintiffs did not receive any discernable value or benefit in exchange for the transfer."
"(ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;"	"At all times, any transfers of Plaintiffs' property to or through [FTX Digital] were made when Plaintiffs were insolvent. In the alternative, (i) the Plaintiffs became insolvent as a result of the transfers;"
"(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;"	"(ii) Plaintiffs were caused by Mr. Bankman-Fried (and/or others acting at his direction) to engage in a business or a transaction for which they had unreasonably small capital;"
"(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or"	"(iii) Plaintiffs were caused by Mr. Bankman-Fried (and/or others acting at his direction) to incur debts intended or believed to be beyond the Plaintiffs' ability to pay as such debts matured; or"
"(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business."	"(iv) Plaintiffs were caused by the Co-Conspirators to undertake transfers for the benefit of insiders—including the Co-Conspirators themselves—outside of the ordinary course Plaintiffs' businesses."

31. Like Count VII, Count VIII (the intentional fraudulent transfer claim) is also a barebones recitation of the elements of the statute without any information regarding when (or even if) the transfers occurred, whether they went "to or through" FTX Digital, or the value of

each transfer.[12] "This alone is grounds for dismissal." *See Cred Inc.*, 2023 WL 2940483, at *18-*19 ("the individual transfers are not identified by date or amount. Additionally, the Complaint also fails to make clear which of the debtor entities made the transfers and which of the three [defendant] entities received them. Even under the more liberal pleading standard of Rule 8(a), this is insufficient"); *In re Glob. Link*, 327 B.R. at 718 ("Fair notice requires something more than a quotation from the statute"); *THQ Inc. v. Starcom Worldwide, Inc. (In re THQ Inc.)*, No. 12-13398 (MFW), 2016 WL 1599798, at *4 (Bankr. D. Del. Apr. 18, 2016) ("More problematic is that the Plaintiff did not even identify what transfers were made to the Movants. This is not sufficient."); *In re Aphton Corp.*, 423 B.R. 76, 87 (Bankr. D. Del. 2010) (a complaint must contain allegations of the "date, place or time" of the transfer at issue so that defendants are "on notice of the precise misconduct with which they are charged") (citing *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3d Cir. 1984)).

32. The Amended Complaint's other conclusory statements regarding the Chapter 5 Claims are similarly inadequate. *See Cred Inc.*, 2023 WL 2940483, at *18. For instance, the U.S. Debtors allege that they "did not receive any discernable [sic] value or benefit in exchange for the transfers" and that "any transfers of Plaintiffs' property to or through [FTX Digital] by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were not for reasonably equivalent value in exchange from [FTX Digital]." Am. Compl. ¶¶ 120, 128(i) (emphasis omitted). Yet, the U.S. Debtors provide no details regarding the value of any individual

[12] Although the U.S. Debtors reference an alleged $143M transfer of fiat currency into accounts in FTX Digital's name at Moonstone and Silvergate, these are the same accounts that the U.S. Debtors agreed FTX Digital "shall be primarily responsible for recovering value from" and that the Recognition Order "entrust[s] to the Joint Provisional Liquidators." *See* Am. Compl. ¶ 28; Cooperation Agreement ¶ 4; Recognition Order ¶ 6. Regardless, the U.S. Debtors' allegations are still insufficient because they fail to include a date or demonstrate that any such transfer of cash to those accounts meets the other elements of section 548.

transfers to support that there was no mutual exchange. Courts have concluded that a complaint fails to state an avoidance claim when "it does not include, or even reference, the significant value received by [the debtor] pursuant to the overall transaction."[13] *In re Old CarCo LLC*, 435 B.R. 169, 187 (Bankr. S.D.N.Y. 2010). The U.S. Debtors' allegations regarding value also contradict others in the Complaint, in which the U.S. Debtors admit that they received quantifiable value from FTX Digital after the New Terms of Service. *See* Am. Compl. ¶ 44 ("All transactional fees earned under the New Terms of Service were paid to FTX Trading").

D. Allegations of Actual Fraudulent Intent Require Significantly More Than Provided by the Amended Complaint

33. Although Count VIII's failure to meet the lower pleading burden in Rule 8 disposes of it outright, as an actual, intentional fraud claim, it "must meet the elevated pleading standards of Federal Rule of Civil Procedure 9(b)" to survive this Motion. *See Cred Inc.*, 2023 WL 2940483, at *18 (quoting *Charys Liquidating Tr. v. Growth Mgmt., LLC (In re Charys Holding Co.)*, No. 08-10289, 2010 Bankr. LEXIS 2073, at *7 (Bankr. D. Del. July 14, 2010)). In addition to the deficiencies noted above, the U.S. Debtors' failure to allege with specificity the transfers at issue defeats their ability to meet this higher standard. *See id.* at *19 ("though the Trust pleads that Cred's insolvency at the time of the transfers and their temporal proximity to Cred's collapse both suggest fraudulent intent, its failure to specify exactly when the transfers took place precludes it from establishing these badges of fraud"). The U.S. Debtors' futile attempt to overcome this burden by including one general reference to intercompany transfers made in the course of business during an eleven month period falls far below the specificity requirement. *See* Am. Compl. ¶ 45.

[13] These allegations also conspicuously ignore that the regulatory license FTX Digital held had significant value and generated further value to FTX Group. For example, FTX Digital was authorized to transact in a regulated environment so that the FTX Group could continue to attract large institutional investors.

34. Similarly, lumping all of the "attempted or consummated" transfers into one fraudulent scheme does not exempt the U.S. Debtors from specifically alleging the value of each transfer at issue. *See Cred Inc.*, 2023 WL 2940483, at *18 (dismissing actual fraudulent transfer claim that did not "include any details regarding the date or amount of the individual transfers") (citing *Miller v. ANConnect, LLC (In re Our Alchemy, LLC)*, Nos. 16-11596 (KG), 18-50633 (KG), 2019 Bankr. LEXIS 2906, at *24 (Bankr. D. Del. Sept. 16, 2019) ("The Complaint does not identify the number of transfers Alchemy made, or the specific dates and amounts of those transfers. Instead, it aggregates the transfers into a lump sum over a one year period. Hence, the Trustee failed to satisfy the heightened pleading standards of Rule 9(b).")).

35. In their defense, the U.S. Debtors do concede that they are still reviewing "financial records from their ongoing investigation." *See* Am. Compl. ¶¶ 45, 47. But the U.S. Debtors cannot properly file this placeholder Amended Complaint and expect its avoidance claims to pass muster under the Federal Rules. *See Akoundi v. FMS, Inc.*, No. 14 Civ. 366 (RWS), 2014 WL 3632008, at *4 (S.D.N.Y. July 22, 2014) ("While it is understood that plaintiffs will not always have the full set of relevant facts in their possession at the time a lawsuit commences, a vague promise to establish facts later on in litigation to support recovery is insufficient to survive a motion to dismiss.") (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561 (2007)).

E. The Amended Complaint Lacks Other Critical Allegations Regarding the "Transfers" at Issue

36. Even if they had properly pleaded a claim under section 544 (they have not), the U.S. Debtors still have not demonstrated that they have standing to bring a claim under that section. To plead a section 544 claim, a proper plaintiff may "step into the shoes" of a general unsecured creditor and invoke the "applicable law" that such creditor could use outside of the bankruptcy to avoid the alleged transfers. *See In re Parker School Uniforms, LLC*, 2021 WL 4553016, at *10

(Bankr. D. Del. Oct. 5, 2021) ("If there exists no such creditor, a trustee may not act under section 544(b)(1).") (quoting *In re LSC Wind Down, LLC*, 610 B.R. 779, 784 (Bankr. D. Del. 2020)). *First*, the Amended Complaint's bare accusations provide no insight as to which U.S. Debtor allegedly transferred what property to demonstrate which U.S. Debtor would be the appropriate plaintiff to step into the shoes of its creditors. *Second*, the U.S. Debtors have not identified in the Amended Complaint a single creditor whose shoes they may "step into" for purposes of suing non-U.S. entities for alleged transfers from non-U.S. debtors all occurring outside the U.S. *Cf. In re LSC Wind Down*, 610 B.R. at 786 ("Plaintiff has alleged by name numerous unsecured creditors whose standing it is using to pursue the Defendants[.]"). It is not even clear whether the U.S. Debtors *can* allege the existence of any legitimate triggering creditor to assert claims under the Delaware Uniform Fraudulent Transfer Act because all of the proper International Customers are, by definition, not citizens of the United States.

F. The Section 550 Claim Fails Along with the Other Chapter 5 Claims

37. A claim for recovery under section 550 requires a viable voidable transfer claim. *See* 11 U.S.C. § 550 (permitting recovery on a voidable claim from the initial transferee or any immediate or mediate transferee). Because the Amended Complaint does not adequately allege a claim for actual or constructive fraudulent transfer, Count IX should also be dismissed.[14] *See THQ Inc. v. Starcom Worldwide, Inc. (In re THQ Inc.)*, No. 12-13398, 2016 WL 1599798, at *4 (Bankr. D. Del. Apr. 18, 2016) ("Because the Court is granting the Motions to Dismiss the preference and fraudulent transfer claims, there is no basis for a claim under section 550(a)."); *In re Sunset*

[14] As stated in Section I.B, *supra*, although Count IX is alleged against "all defendants," the U.S. Debtors could not—and did not—allege that the JPLs are subsequent transferees. As such, they are not proper defendants for this claim. *See* Am. Compl. ¶¶ 131-134.

Aviation, 468 B.R. at 651 (dismissing § 550 claim as moot after dismissing the underlying §§ 547 and 548 claims); *In re USDigital, Inc.*, 443 B.R. 22, 40 (Bankr. D. Del. 2011) (same).

III. This Court Should Abstain From Ruling On Count VI In Deference To The Bahamas Court

38. This Court recently held that "the Bahamian Court has control over [assets held in the Bahamas]; they have *in rem* jurisdiction." June 9 Hr'g. Tr. at 164:13-16. Ignoring that determination, the U.S. Debtors have amended their original complaint to add a declaratory judgment claim that—on its face—concerns property over which The Bahamas Court has sole, uncontested jurisdiction. Specifically, Count VI seeks a declaratory judgment that FTX Digital "has no ownership interest of any kind (other than bare legal title) in any fiat currency or cryptocurrency *currently in its possession*." Am. Compl. ¶ 116. That declaration plainly applies to property that is both located outside of the United States and in FTX Digital's possession.

39. As an initial matter, the U.S. Debtors are legally estopped from alleging that FTX Digital does not "own" any property outside of the United States. *See, e.g.*, *KEB Hana Bank U.S. v. Red Mansion, LLC*, 763 Fed. App'x 256, 257-58 (3d Cir. 2019) (unpublished) (finding no abuse of discretion where district court estopped a party from claiming that the address on a notice of foreclosure was inaccurate because it had conceded the accuracy of the address in previous court filings); *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 319 (3d Cir. 2003) ("The basic principle of judicial estoppel is that absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.") (quotations and alterations omitted). In the Cooperation Agreement, which was approved by this Court, the U.S. Debtors agreed that FTX Digital "shall be primarily responsible for recovering value from (a) the assets and property in the name of FTX DM, including without limitation, all real and personal property and bank and security

accounts in the name of FTX DM, regardless of where located." Cooperation Agreement, ¶ 4. The U.S. Debtors may not breach the Cooperation Agreement in bad faith in order to take a position in this Adversary Proceeding that is irreconcilable with the one they took a mere six months ago when executing—and seeking this Court's blessing of—the Cooperation Agreement. *See Krystal Cadillac-Oldsmobile GMC Truck*, 337 F.3d at 319 (3d Cir. 2003) (noting that "the party to be estopped must have taken two positions that are irreconcilably inconsistent," changed its position in bad faith, and that estoppel was "tailored to address the harm identified").

40. In any event, a court may abstain from hearing a proceeding arising under or related to title 11 "in the interest of justice, or in the interest of comity with State courts or respect for State law." 28 U.S.C. § 1334(c)(1). Section 1334(c)(1)'s reference to "State courts" and "State law" includes foreign proceedings under the doctrine of international comity. *In re CPW Acquisition Corp.*, No. 08-14623 AJG, 2011 WL 830556, at *6 (Bankr. S.D.N.Y. Mar. 3, 2011) (citing cases).

41. There is no "mathematical exercise" for determining abstention is appropriate; however, courts weigh twelve factors in making this assessment:

i. the effect or lack thereof on the efficient administration of the estate;
ii. the extent to which state law issues predominate over bankruptcy issues;
iii. the difficulty or unsettled nature of applicable state law;
iv. the presence of a related proceeding commenced in state or other non-bankruptcy court;
v. the jurisdictional basis, if any, other than section 1334;
vi. the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
vii. the substance rather than the form of an asserted "core" proceeding;
viii. the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
ix. the burden of the court's docket;
x. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
xi. the existence of a right to a jury trial; and
xii. the presence of non-debtor parties.

In re Integrated Health Servs., Inc., 291 B.R. 615, 619 (Bankr. D. Del. 2003) (citations omitted). All twelve factors weigh in favor of abstention.

42. *First*, abstaining from hearing Count VI, at least with respect to assets in FTX Digital's possession outside of the United States, would not negatively affect the efficient administration of the U.S. Debtors' estate. So "little has happened in this Adversary Proceeding" that any potential delay would not be prejudicial. *In re Integrated Health Servs.*, 291 B.R. at 619; *In re Int'l Tobacco Partners, Ltd.*, 462 B.R. 378, 393 (Bankr. E.D.N.Y. 2011) (first factor weighed in favor of abstention when the adversary proceeding was "still in its early stages"). Moreover, pursuing a declaratory judgment claim that explicitly regards property FTX Digital owns, and which is outside the territorial United States such that another court has jurisdiction over that property would only slow down the administration of these chapter 11 cases by, for instance, wasting time and resources litigation an issue that could not be subsequently enforced.

43. *Second*, foreign law predominates the issues in Count VI, which exclusively regards property in FTX Digital's name, outside of this Court's jurisdiction, and within the *in rem* jurisdiction of The Bahamas Court. This claim, like all of the declaratory judgment claims, hinges on the law governing the Old and New Terms of Service—*i.e.*, English, Antiguan, and/or Bahamian law. *See* JPLs' Stay Motion ¶ 35. Although the U.S. Debtors attempt to mask the underlying issues by suggesting their requested relief arises under section 541 of the Bankruptcy Code, this is a facade. *See In re OMNA Med. Partners, Inc.*, No. 00-1493 (MFW), 2000 WL 33712302, at *3 (Bankr. D. Del. June 12, 2000) ("While the Debtor seeks to characterize the issues as bankruptcy issues . . . the issues are simply contract interpretation issues and are, by the terms of the contract, governed by Texas law. Thus, there are no uniquely bankruptcy issues that need be decided in this Court.").

44. *Third*, Count VI involves a complex application of English, Antiguan and Bahamian law. Deciding the relevant issues in this Court would necessitate the testimony of foreign law experts at significant expense to both the parties and the Court; whereas The Bahamas Court is more familiar and experienced with the applicable English and Commonwealth laws and has *in rem* jurisdiction over the property.[15] Courts routinely recognize that these facts tip the abstention scales. *See In re OMNA Med. Partners, Inc.*, 2000 WL 33712302, at *3 ("while we are not aware that there are any unsettled or difficult state law questions involved, we believe that the state court is the better forum to make that determination, if there are"); *In re Kessler*, 430 B.R. 155, 167 (Bankr. M.D. Pa. 2010) ("[O]ne of the issues . . . is an unsettled matter of statutory construction of a Pennsylvania, not federal, statute . . . Therefore, this factor weighs in favor of abstention."); *Arkwright-Boston Mfrs. Mut. Ins. Co. v. City of New York*, 762 F.2d 205, 211 (2d Cir. 1985) (holding that the scales tipped in favor of abstention because the case raised novel issues of state tort and construction law).

45. *Fourth*, the parties have an adequate remedy under applicable law in The Bahamas. The Bahamas Court has exclusive *in rem* jurisdiction over substantially all of the property at issue (*i.e.,* all property in FTX Digital's name outside of the United States) and has characterized the issues raised in Count VI as among those that are "fundamental to the progress of the provisional liquidation of [FTX Digital]." *See* Chase Decl. Ex. E, March 21, 2023, Order by The Bahamas Court on the motion for leave to file the JPLs' Stay Motion; *see In re CPW Acquisition Corp.*, No. 08-14623 AJG, 2011 WL 830556, at *8 (Bankr. S.D.N.Y. Mar. 3, 2011) (construing this factor

[15] The Bahamian legal system is based on the English system, with the ultimate appeal court being the Judicial Committee of the Privy Council consisting of a five-judge panel of justices of the Supreme Court of the United Kingdom.

more loosely than requiring the commencement of a parallel proceeding and holding that it supports abstention when there is an adequate remedy under foreign law in a foreign forum).

46. *Fifth*, this Court would not have jurisdiction over Count VI but for 28 U.S.C. § 1334. There is no diversity jurisdiction among the parties in that all of the plaintiffs and the defendants are all non-U.S. persons. Am. Compl. ¶ 15; *see* 28 U.S.C. § 1332(c)(1) (a corporation is a citizen of "every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business"). There also is no federal question jurisdiction as Count VI is not grounded in U.S. law (let alone federal law).

47. *Sixth*, Count VI is "not inextricably intertwined with the administration of the estate" but is instead inextricably intertwined with interpreting a foreign law governed contract. *See In re Integrated Health*, 291 B.R. at 621. The JPLs do not dispute that the outcome of the directions application may theoretically "result in an enhanced distribution" for the U.S. Debtors' creditors, but that does not render the proceeding "so related" to the chapter 11 cases as to disfavor abstention. *Id.*; *cf. In re Maxus Energy Corp.*, 560 B.R. 111, 125 (Bankr. D. Del. 2016) (explaining that "an enhanced distribution in the bankruptcy case," is not sufficient to oppose abstention when assessing the first factor of the permissive abstention test) (citation omitted).

48. *Seventh*, in substance, Count VI is grounded in foreign law, regards property outside of this Court's *in rem* jurisdiction, and thus do not constitute a "core" proceeding in these cases. *See In re Trans World Airlines, Inc.*, 278 B.R. 42, 47-49 (Bankr. D. Del. 2002) (proceeding was non-core because it ultimately sounded in tort and "depend[ed] on an interpretation of state law"). This cause of action explicitly acknowledges it concerns property that is currently within FTX Digital's estate—not the U.S. Debtors' estate. *See* Am. Compl. ¶ 116. Notably, this factor explicitly urges this Court to disregard the form of the U.S. Debtors' allegations and to focus on

the substance of the underlying contract interpretation claim—a non-bankruptcy issue. *In re Integrated Health*, 291 B.R. at 619. The potential for "an enhanced distribution for creditors in the bankruptcy cases . . . does not mean it is so related to the main case as to warrant our retention of jurisdiction over it." *Id.* at 621.

49. *Eighth*, although certain other causes of action in the Amended Complaint (if properly pleaded) are "core," those claims can easily be severed from Count VI. *See In re Int'l Tobacco Partners*, 462 B.R. at 394 (state law issues could be severed from Code related issues even though the proceeding was core); *In re Maxus Energy Corp.*, 560 B.R. at 127 (claims could be severed from the core bankruptcy matters even though their resolution "may ultimately impact" the Debtors' estate").

50. *Ninth*, Count VI would burden this Court's docket with a cause of action it already held was outside of its *in rem* jurisdiction. Litigating with no recourse would usurp significant estate and judicial resources, especially when The Bahamas Court is ready, willing, and able to adjudicate the issue.

51. *Tenth*, the U.S. Debtors seem to have commenced the Adversary Proceeding precisely to thwart the JPLs' efforts to have The Bahamas Court expeditiously review the Application. Newly alleged Count VII is part of that effort. It is no coincidence that the U.S. Debtors commenced the Adversary Proceeding within days of the JPLs having shared their intent to file the JPLs' Stay Motion (and ultimately the Application) and did so without providing the contractually agreed to "reasonable notice." This Court should not reward the U.S. Debtors for ignoring their court-ordered obligations and the chapter 15 automatic stay. *See* Cooperation Agreement ¶¶ 2, 11; 11 U.S.C. § 1520.

52. *Eleventh*, the U.S. Debtors' right to a jury trial is not implicated, as there is no right to a jury trial of declaratory judgment claims, and the Amended Complaint does not demand a jury trial.

53. *Twelfth*, the FTX Digital Defendants concede that the parties to Count VI are all debtors: the U.S. Debtors, FTX Digital, a chapter 15 debtor, and the JPLs, an extension of FTX Digital. However, the other eleven factors weigh in favor of abstention.

54. Taken together, all twelve abstention factors demonstrate that this Court should abstain from deciding Count VI pursuant to 28 U.S.C. § 1334(c)(1). Abstention is also consistent with the principles of international comity. *See In re Regus Bus. Ctr. Corp*., 301 B.R. 122, 127-29 (Bankr. S.D.N.Y. 2003) (abstention was appropriate when considering international comity because, among other things, (i) the parties to the dispute were headquartered in England; (ii) the agreements at issue were governed by English law; and (iii) the dispute could "be resolved promptly and fully by an English court which specializes in the resolution of such disputes").

55. Considering only factors two through six and that the JPLs expect The Bahamas Court would rule on the Application expeditiously, this Court also must mandatorily abstain from adjudicating Count VI.[16] *See Stoe v. Flaherty*, 436 F.3d 209, 213 (3d Cir. 2006) (listing the factors to consider upon a timely motion for abstention under 28 U.S.C. § 1334(c)(2)).

CONCLUSION

WHEREFORE, for the reasons stated above, the JPLs respectfully request that the Court (i) dismiss Counts VII-IX; (ii) abstain from deciding Count VI; and (iii) grant such other relief as is proper.

[16] Given that the permissive abstention factors subsume the test for mandatory abstention, the JPLs apply the permissive abstention analysis to Count VI.

Dated: July 12, 2023

/s/ *Kevin Gross*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
FTX TRADING LTD., *et al.*,	.	Case No. 22-11068 (JTD)
Debtors.	.	(Jointly Administered)
AUSTIN ONUSZ, CEDRIC KEES VAN PUTTEN, NICHOLAS J. MARSHALL AND HAMAD DAR, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	.	
Plaintiffs,	.	
v.	.	Adv. Pro. No. 22-50513 (JTD)
WEST REALM SHIRES INC., WEST REALM SHIRES SERVICES INC. (D/B/A FTX US), FTX TRADING LTD., ALAMEDA RESEARCH LLC, SAM BANKMAN-FRIED, ZIXIAO WANG, NISHAD SINGH AND CAROLINE ELLISON,	.	Courtroom No. 5 844 King Street Wilmington, Delaware 19801
Defendants.	.	Thursday, June 8, 2023 9:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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(Proceedings commence at 9:05 a.m.)

(Call to order of the Court)

THE COURT: Good morning, everyone. Thank you. Please be seated.

MR. LANDIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. LANDIS: And may it please the Court, Adam Landis from Landis, Rath & Cobb, here on behalf of FTX Trading Limited and its affiliated debtors.

Your Honor, the parties are mindful of the limited time we have in court today. I understand Your Honor needs to leave the bench at 2, and --

THE COURT: No later than 2.

MR. LANDIS: No later than 2.

THE COURT: I'm going to push through, there will be no lunch break. We'll just push through until we get to some time between 1:30 and 2 --

MR. LANDIS: Terrific, Your Honor.

THE COURT: -- whenever there's a convenient break point.

MR. LANDIS: And we aim to use the time as efficiently as possible.

Based on the parties' travel plans -- a lot of people have come a long way for this hearing today -- the parties have determined to go forward first, with Your

Honor's permission, with Item Number 8, which is the JPLs' motion for a declaration regarding the automatic stay; or, in the alternative, lifting the stay, and we would move everything else to the back of the agenda.

Those items that need to go to the back of the agenda are Item Numbers 7 and 9, which are sealing motions.

We also have on the agenda Item 4 and 10. Item 4 is the KEIP, which had no objections and we filed a request to have the order signed. But we also have Item 10, which is the KEIP sealing order. Objections were due at the hearing in connection with that, but we have not heard about any objections that were going to be raised, so we wanted to see if that -- those matters could be dispatched before we got going. But if not, we're content to have them moved to the back of the agenda and dealing with them -- deal with them there.

THE COURT: Yeah, we can deal with the KEIP. It was submitted under COC, so that --

MR. LANDIS: Correct.

THE COURT: -- that order will be entered.

Is there any objection to the sealing motion?

(No verbal response)

THE COURT: Hearing no objection, I will enter that order, as well.

MR. LANDIS: Okay. With that, Your Honor, I will

cede the podium to counsel to the JPLs.

I will note that we did submit a pretrial order yesterday, a proposed pretrial order that would govern the conduct of this hearing and, again, aiming towards efficiency in trying to get everything done to help people to be here and witnesses to be on and to get out of Dodge, as it were.

THE COURT: Okay. Thank you, Mr. Landis.

MR. LANDIS: Thank you, Your Honor.

MR. ZAKIA: Good morning, Your Honor.

THE COURT: Good morning.

MR. ZAKIA: Jason Zakia of White & Case on behalf of the JPLs.

As counsel indicated, we have conferred with counsel for the debtor, the committee, and the other parties and have a proposed process to go forth today, with the Court's permission, and I'd just like to lay that out for you.

First, we -- the parties have agreed to waive openings and proceed directly to the evidence.

THE COURT: Okay.

MR. ZAKIA: With respect to the evidence, the parties have agreed to 40 -- sorry -- 54 joint exhibits, which were submitted along with the pretrial order, to which there were no objections. And with the Court's permission, we would jointly offer those into evidence.

THE COURT: Okay. Is there any objection?

(No verbal response)

THE COURT: They're admitted without objection.

(JTX-1 through JTX-54 received in evidence)

MR. ZAKIA: All right. There were a handful of exhibits that the debtors had offered over which there were some objections. My understanding from counsel to the debtors are those are withdrawn, so we don't need to address those.

THE COURT: Okay.

MR. ZAKIA: And then, with regard to the witnesses, Your Honor, there are three, two for the JPLs and one for the debtors.

In an effort to keep this as efficient, but yet as effective as possible, the agreement is -- so we have two witnesses, one is -- one of JPLs' is Mr. Peter Greaves, who will be subject to cross-examination. We would propose to offer his declaration, but still do a brief direct, hitting a few points. But by offering the declaration, that direct can be truncated.

And then we have a second witness, who is our foreign law, Bahamian law expert, who I understand will not be subject to any cross-examination, although she's present should the Court have any questions. And we would propose to offer -- to do her testimony simply by the declaration,

unless the Court has questions for her.

THE COURT: Okay.

MR. ZAKIA: And the debtors have one witness, Mr. Mosely. Similar to Mr. Greaves, he will be subject to cross, and so I believe they intend to both offer the declaration and a direct. But putting in the declaration, that direct can be truncated.

THE COURT: Okay.

MR. ZAKIA: So, if that works with the Court, we would proceed to the JPLs' first witness and call Mr. Peter Greaves.

THE COURT: Okay. Mr. Greaves, come forward please. Please take the stand and remain standing.

THE ECRO: Please raise your right hand. Please state your full name and spell your last name for the court record please.

THE WITNESS: Peter James Greaves, G-r-e-a-v-e-s.

PETER GREAVES, WITNESS FOR THE JOINT PROVISIONAL LIQUIDATORS, AFFIRMED

THE ECRO: You may be seated.

THE WITNESS: Your Honor.

THE COURT: Okay. You may proceed.

MR. ZAKIA: Thank you, Your Honor.

As I indicated, Mr. Greaves submitted a declaration, it can be found at Docket Number 1194 -- in

support of the JPLs' motion, and we would offer that declaration into evidence at this time.

THE COURT: Any objection?

(No verbal response)

THE COURT: It's admitted without objection.

(Greaves Declaration received in evidence)

MR. ZAKIA: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ZAKIA:

Q Mr. Greaves, good morning.

A Good morning.

Q Could you please introduce yourself to the Court and tell us what you do for a living, sir?

A Yes. Good morning, Your Honor. My name is Peter James Greaves. I am a partner in PricewaterhouseCoopers based in Hong Kong, and my role there is to lead PwC's insolvency and restructuring practice across Asia Pacific.

Q And roughly how large is the group that you lead at PricewaterhouseCoopers?

A Across Asia, it's several hundred partners and staff.

Q And how long have you worked as a restructuring professional?

A I think I'm in year 33.

Q And do you have any special licenses that you use in the course of your job as a restructuring professional?

A I'm licensed as an insolvency practitioner to take -- to take formal appointments, such as liquidations, administration, receiverships, et cetera, licensed in the U.K.

Q Now could you describe for us, please, sir, the types of jurisdictions and the various jurisdictions in which you've worked over the course of your career?

A Yes. I've worked on cases in a large number of jurisdictions, maybe -- maybe 20 or more. But -- but in a smaller number of countries, I've taken appointments, and they tend to be jurisdictions that follow common law of have their insolvency law based on U.K. law, in order that there's commonality with those systems.

Q Now, over the course of your career, could you just describe for the Court the experience you've had with liquidations or provisional liquidations under the English system?

A Yes. As mentioned, I -- I've been involved in a number of different formal appointments, varying slightly by jurisdiction, but liquidations, I think I would have been involved in, you know, perhaps a hundred or more over my career so far.

Q And could you describe for us, please, sir, under the English system, what the duties of a liquidator are?

A Yes. At its simplest, it's to investigate and establish

the assets of an estate and, on other side of the tally, to investigate and establish the creditors, the liabilities of the estate, and to try and match those with -- with the other side.

Q Now is -- prior to your work on the FTX Digital Markets case, had you ever served as a liquidator in any case in the Bahamas?

A I have not.

Q And could you please describe for me what the requirements are or qualifications for a liquidator or a provisional liquidator to serve in the Bahamas?

A Yes. To take a -- to present oneself to the Court as being able to take such an appointment, the practitioner needs to be locally based and locally experienced or have a qualification or a license recognized by the Supreme Court of the Bahamas. And the U.K. license that I hold qualifies. I think there are maybe two more, maybe Canada and Australia, as well, allow one to take appointments in -- in the Bahamas.

Q Now I'd like to shift a little bit to talk about this particular engagement.

Who appointed you to your role as a joint provisional liquidator for the Estate of FTX Digital Markets?

A The appointment was made by the -- the Supreme Court of the Bahamas.

Q And when did that occur?

A I was appointed on Monday, the 14th of November, 2022.
Q Prior to your appointment as a joint provisional liquidator for FTX Digital Markets, did you have any connection or involvement with FTX or any of its affiliates?
A No. None whatsoever, no.
Q Prior to your appointment as a joint provisional liquidator, did you have any connection or involvement with any of the founders of FTX?
A No, I did not.
Q Now could you please describe for the Court, generally, what, if any, fiduciary duties you have in your role as a joint provisional liquidator and who those duties may run to?
A Yes. The provisional liquidators are supervised by the appointing court. The primary fiduciary duty is to the creditors of the -- of the company or creditors of the company.
Q Now, as a joint provisional liquidator for FTX Digital Markets, what is it -- what is your goal? What is it that you're trying to accomplish?
A At the risk of repeating slightly an earlier question, I -- I would -- I would summarize as trying to establish the -- the nature and quantum of assets caught within the perimeter of the estate as of the date of insolvency and to establish and make contact with the creditors of the estate.
Q Now what brings us here today is an application that the

JPLs would like to file in the Supreme Court of the Bahamas.

Could you describe for the Court what that application is?

A Again, it relates to the two main points that I just mentioned. But we are looking for guidance from the Bahamas Court on how we may proceed. The provisional liquidators are very much expected to make their own decisions as far as possible, if it's within the duties accorded to them by the law and the order appointing them. But if the liquidators reach a stage where they need to take directions, then we're obliged to do that by referring to the Bahamas Court.

And that's what this application relates to. It's seeking directions on a number of points critical to the execution of our roles.

Q And I think you said two of things that you try to identify as a joint provisional liquidator are assets and liabilities of the estate.

Could you give the Court an example of a specific matter related to the assets of FTX Digital Markets from which you require direction from the Bahamian Court?

A Yes. The -- without necessarily going through all of them, the assets that, from the records we have, appear to be in the estates or likely in the estate, if the asset were cash in bank accounts, potentially digital assets. And then there's some real property and -- and other "chattel assets,"

I describe them as. There are questions around who those assets belong to.

And if I take the example of cash, the cash that was in the name of FTX Digital at the outset of the insolvency were principally in two types of accounts:

Either accounts that appeared to be operated for general expenses and were either marked as such or not marked in any particular way at all;

And there are other accounts that we took over that are marked "for the benefit of," not necessarily stating who they were held for the benefit -- benefit of, but the assumption is that they may be held in trust for the benefit of customers.

And until we can establish, A, that those cash assets, for example, sit within the perimeter of the estate -- and it appears that they do, they're in accounts in the name of the entity -- and until we can establish on what basis they're held, whether they're held as a general asset of the estate or on trust for the beneficiaries -- which appear may be the customer or customers -- then we -- we can't proceed.

Q Now shifting to the other side of the leather -- ledger. Could you give the Court an example of an issue with respect to the liabilities of the FTX Digital Markets estate from which you would like to seek or need to seek guidance from the Bahamian Court?

A Yes. The -- I suppose the principal challenge that we are facing or the collective estates are facing is that it's unclear from the evidence we have available to us to what extent customer relationships transferred or -- or migrated to FTX Digital from FTX Trading. We see evidence that strongly suggests to us that that is likely to have happened. But again, in order to proceed, we need guidance from a court and -- and to get some input into that.

Q Now, in the 33 years that you have worked as a restructuring professional and in the 100 cases in which you've been involved in a liquidator, have you ever before sought permission from a foreign court in order to go to the appointing court to seek direction?

A I have not needed to. I don't -- I don't recall a time when I've had to do that, no.

Q So can you explain why you're doing that here?

A We -- the -- the JPLs prepared this application for the reasons I've explained, and we shared that information with the debtors under the corporation agreement, to let them know what we're intending to do. And that drew a two prong response:

Firstly, an adversary proceeding was filed in this court very quickly thereafter.

And secondly, we were put on notice that the debtors believe that we would be willfully breaching the stay if we

proceeded with that application. So, certainly speaking for myself -- but I think I speak for all three JPLs, I was motivated not to fall afoul of -- of such a breach, if that were the case.

Q Now could you explain to Judge Dorsey what, if any, consequences would follow for the JPLs and for the provisional liquidation in the Bahamas if the JPLs are not able to file the application for which you're seeking permission?

A From a very practical perspective, we can't do our jobs. And to -- yeah, to describe that another way, we can't fulfill our duties. We're -- we're unable to do the two basic things I described at the outset, which is having clarity around the assets within the estate and -- and who they -- who they might belong to.

Q Now I just want to make sure I understand a little more about the duties that you have as a provisional liquidator, as you understand them.

Let's say you woke up this morning and decided you wanted to make your life a lot easier and save us all a lot of time. Do you, as a JPL, have the power or the authority to just give up and close the provisional liquidation?

A No. No, I do not.

Q Do you, as a JPL, have the authority to just give up on the effort to identify customers and agree that, to the

extent any customers migrated to FTX Digital Markets, you would send them back to FTX Trading or some other entity?
A No such discretion without -- without the permission of the Court or the agreement of the Court, of the Bahamas Court, to do so.
Q And you know, we're here in Delaware, it's a lovely city. Judge Dorsey is an excellent judge.
Do you have the authority as a JPL to just agree that you are going to take your directions from a U.S. Court, rather than the Bahamian Court, on any of these issues?
A I do not, no. The -- the duties we have are set out in statutes and supplemented in the order appointing us and there -- there is no such discretion or power.
Q And under the Bahamian law, you are required to take direction from which court?
A The Supreme Court of the Bahamas.
Q Thank you.
MR. ZAKIA: Your Honor, at this point, we would rest on his declaration for the rest of his direct testimony and I have no further questions at this time.
THE COURT: Okay. Thank you.
Cross.
MR. GLUECKSTEIN: Thank you, Your Honor. Good morning.

CROSS-EXAMINATION

BY MR. GLUECKSTEIN:
Q Good morning, Mr. Greaves.
A Good morning, Mr. Glueckstein.
MR. GLUECKSTEIN: For the record, Brian Glueckstein of Sullivan & Cromwell on behalf of the FTX Chapter 11 debtors before this Court.
BY MR. GLUECKSTEIN:
Q Mr. Greaves, you are not a lawyer, correct?
A I am not a lawyer. That is correct, yes.
Q And you're not offering any legal opinions in any part of your testimony, either in your declaration or in your testimony this morning?
A I, myself, am not, no.
THE WITNESS: Sorry, Your Honor.
Q And Mr. Greaves, you, Mr. Simms, and Mr. Cambridge are charged to act jointly as provisional liquidators with respect to FTX Digital Markets, correct?
A Yes, that's correct.
Q In terms of day-to-day work, you personally are more involved in the financial analysis and digital asset issues or aspects of the assignment, correct?
A That -- that is correct. Not to the exclusion of any other area, but -- that I would say that they're the areas that I spend more time in than others.
Q And Mr. Greaves, with respect to as -- well, as you sit

here today, the current unrestricted cash position of FTX Digital Markets is approximately $1 million or so. Is that correct?
A That -- that's correct.
Q And the other cash that's currently controlled by the JPLs is in "for benefit of" accounts. Is that correct?
A Yes, that -- that's right, or accounts where we can see that the activity that went on in the account looks like it may have been for the benefit of customers.
Q And FTX Digital Markets has unpaid accrued expenses that have been incurred in connection with the work that you and your team are doing that it exceeds the $1 million that you have on hand, correct?
A That is correct, yes.
Q And in fact, you estimate that amount to be somewhere in the -- currently, in the five-to-ten-million-dollar range of unpaid expenses, correct?
A Yes, that is correct.
Q And Mr. Greaves, the only cryptocurrency that the JPLs currently control is an estimated $200,000 or so of illiquid coins that are in a single wallet, correct?
A That's correct, yes.
Q And the only basis to believe that those cryptocurrency assets actually belong to FTX Digital Markets is that an employee gave you the keys to those assets and stated as

much, correct?
A That is correct, yes.
Q Okay. And you have not been able to independently verify that those assets belong to FTX Digital Markets.
A No, I have not.
Q Otherwise, the JPLs control minimal other liquid assets today, correct?
A That's right. Other assets within our estate are no longer or not currently within our control.
Q Mr. Greaves, you testified this morning that the JPLs would -- the consequences of the bankruptcy stay remaining in place would be that the JPLs, including yourself, would not be able to do your jobs, as you put it, correct?
A Yes, that's correct.
Q Okay. With respect to -- you also testified this morning that you don't have the power to take -- in your view, take directions from this Court with respect to questions of assets of the FTX group estates, correct?
A Yes, that's correct.
Q And would you agree with me, sir, that this Court is capable of considering and answering the same questions with respect to ownership of assets and liabilities that are raised in your proposed application?
A I have no doubt of the ability or capability of the Court to do that. My point is just that I'm not allowed to

seek that guidance.
Q But if the Court -- if this Court were to deny the motion today and the automatic stay stays in place, and this Court were to provide answers to the questions, you would, in fact, have answers to the questions as to who owns which assets and liabilities, correct?
A I'd still be obliged to go to the Bahamas Court to seek directions and get guidance on -- on the position, whatever -- whatever this Court found.
Q And you would be able to do that at a later date armed with the findings of this Court as to those assets, same assets and liabilities, which of -- those of which have been determined to be assets of the Chapter 11 debtors, correct?
A I disagree with that. I -- we're already hamstrung in this case for various reasons and haven't been able to achieve as much in the first seven months as I said we would have expected or -- or what I think is commensurate with our duties. So, to accede to further delay whist a court -- another court comes to a decision, when I do not have the power to make that position, I don't think is a tenable position for the JPLs.
Q And the question was a little bit different, Mr. Greaves.
Notwithstanding your stated need to move forward now, if this Court were to make determinations with respect to

property of the estate as between the Chapter 11 debtors and FTX Digital Markets, you would then be able to go, with permission of this Court, to the Bahamas Court and seek directions at that point, couldn't you?

A In theory, I could. But I don't believe that that is in keeping with the duties that I've been charged with.

Q Have you made any requests to the Court in the Bahamas to permit this Court to decide the issues that are presented in the Chapter 11 debtors' adversary proceeding?

A I have not, for fear of the consequences that I mentioned earlier because we were put on notice by the debtors.

Q And I think you testified in your statements this morning, Mr. Greaves. But you are familiar with the adversary proceeding complaint that was filed by the Chapter 11 debtors before this Court, correct?

A I have read it, yes.

Q And in fact, the FTX Debtors have asked this Court to address the issues the JPLs raised in the adversary proceeding complaint with respect to assets and liabilities of the -- of both estates, correct?

A Yeah, I -- I understand that the adversary proceeding will need to be heard in due course if it's not dealt with otherwise, and I believe, from reading it, that it deals with similar -- or issues that cross over.

My point is a different one, that I'm -- that's a separate proceeding here and I still have to deal with my own court in the Bahamas and report to it and seek directions from the Bahamas Court.

Q And it's your understanding, Mr. Greaves, that, irrespective of what happens with respect to the motion pending today, the FTX Debtors' adversary proceeding will proceed before this Court, correct?

A I assume that it will, yes.

Q And you have no objection to that adversary proceeding and the issues contained therein proceeding before this Court, correct?

MR. ZAKIA: Objection. Your Honor. The pleadings in that case speak for themselves. We filed a motion to dismiss. So I don't know if counsel is trying to get the witness to opine on how that's going to get resolved, but we do have a motion to dismiss that case pending.

MR. GLUECKSTEIN: I am not asking him to opine on the legal issues, Your Honor. I was simply asking whether, from the -- from a process standpoint, whether Mr. Greaves, as a JPL, has any objection to proceedings continuing before Your Honor.

THE COURT: You can answer it the best you can.

THE WITNESS: Thank you.

From a nonlegal perspective, Mr. Glueckstein, just

going back to how you originally phrased the question, I don't agree with what's asserted in the -- personally, in my capacity as a JPL, do not agree with what is asserted in the adversary proceeding.

But non-lawyerly -- lawyerly understanding of that proceeding is that it will be dealt with in this Court, unless it is dealt with in some other way, unless it is either dismissed or -- or there's some other way of it being dealt with. I understand that to be the case.

BY MR. GLUECKSTEIN:

Q One of the other things you testified about this morning, Mr. Greaves, and in your declaration, concerns what you referred to as the "liabilities side" and "contacting customers." Do you recall that?

A Yes.

Q The JPLs have actually sent two notices to approximately 2.3 million FTX.com customers, requesting those customers provide contact details to you through a website, correct?

A Yes. The intention of sending that note was to reach out to FTX Digital customers for the purpose of letting them know that the provisional liquidation is entrained and requesting them to submit contact details.

Q And it's true, Mr. Greaves, correct? That the JPLs used contact information for these 2.3 million customers obtained from a file that was pulled from an employee commuter --

computer in the JPLs' possession.
A That is correct, yes.
Q And the JPLs did not do anything to vet that list as to whether those names on it were customers of FTX Digital Markets before reaching out to those 2.3 million people in January of 2023, correct?
A The vetting that we carried out was to look at the file. And it was marked as a list of customers. It was on the machine of an FTX Digital employee. And in discussions with employees, remaining employees, it -- it seemed to us that it was the best record that we have or had. But I believe it's still the best record that we have of potential creditors of FTX Digital. And the duty that we have is to reach out to potential creditors.

And in all circumstances, being starved of other data, which I firmly believe belongs to the estate of FTX Digital, we did, indeed, take the decision to proceed to reach out, per our duties, to contact potential creditors.
Q But in fact, Mr. Greaves, you don't have information to know, one way or the other, whether any employee from whose that file was extracted was an employee solely of FTX Digital Markets or is an employee of FTX Digital Markets and other entities in the FTX group, correct?
A I have some idea. I am -- there are certain employees I'm aware of who were double- or triple-hatted. They had

roles with one or more entity.

There were other employees who, from the payroll records, I can see were only ever employed by FTX Digital. And I suppose the largest category of the latter would be those hired into the group for the first time after the creation of Digital, of FTX Digital, in the Bahamas. I personally think it would be very unlikely that they would have been previously employed by other FTX group companies and highly unlikely that they were also employees of other group companies.

Q Did you -- from whose computer was this list came?

A I don't recall, sitting here, which -- which of the employees it was on.

Q Do you know whether you did an analysis to determine definitively whether the employee's machine from whose that file was extracted was an employee of FTX Digital Markets?

A Yes. I -- I think the way we looked at -- from memory, the way we looked at the machines in our possession -- and just by way of background, there were a number of laptops and desktops in the office site when we took over -- we were careful to divide them up in -- between employees of FTX Digital and, as far as we were aware, non-employees. And there were, indeed, computers for employees of other group companies in -- to use the terminology of these proceedings, in different silos, not actually in the FTX.com silo.

Q As you sit here today, Mr. Greaves, you do not know whether anyone of the 2.3 million people on the list to whom you sent creditors is, in fact, a creditor -- that you sent notices is, in fact, a creditor of FTX Digital Markets, correct?
A And that's precisely one of the questions I want to ask the Bahamas Court. I -- I need help to understand that. I have reason to believe that they are likely to be FTX Digital creditors, but I need help in deciding that.
Q Okay. But before getting that answer, you have put two mailings out to 2.3 million people suggesting that they might be creditors of FTX Digital Markets, correct?
A That's right, in accordance with my duties.
Q And to date, there have been approximately 46,000 individuals who have registered at your website. Is that correct?
A That might be slightly out of date, but yes, I think forty, forty-five, 50,000, so far.
Q You testified this morning that -- and in your declaration that, in your view, it is "likely" -- I believe is the term you used this morning -- that there are cash and digital assets, potentially other assets in the estate of FTX Digital Markets, correct?
A That's correct.
Q You also testified that you believe that customers have

moved or migrated prior to filing for liquidation from FTX Trading to FTX Digital Markets, correct?
A That's right.
Q And you've reached that conclusion based on a five-page document called a "migration plan" that's attached -- that was attached to your declaration, interviews with a handful of employees, and publicly available announcements, correct?
A They're certainly three of the pieces of evidence or factors that helped me form the view that you set out a little while ago.
Q All right. So, other than those three pieces, have -- what other pieces of evidence have you identified and reviewed that allow you to testify that it is likely that customers moved to Digital Markets?
A I -- this may not be exhaustive, but let me -- let me try and try to keep it brief.

If I -- if I have to use as a crutch the chronology, I take it Digital was set up in July of 2021. It began to both hire new employees and take transfers for existing group employees onto its payroll based on the Bahamas.

In September 2021, it was licensed by the Securities Commission of the Bahamas. And I understand the purpose of the license was allow -- to allow it to provide services and operate the international exchange.

I understand that the migration plan was part of that

application, looking at the date of it. I'll come back to the migration plan in a moment.

By November 2021, bank accounts were opened in the name of FTX Digital. That continued through until, I think, January. There are a number of accounts, both in the U.S. and overseas, in a number of denominations.

And the hard -- piece of hard evidence that we do have -- we are denuded over full details of -- of the platform, but we do have -- we put together the pieces of the puzzle to look at bank statements for the accounts that I've just spoken to, and they indicate payment flows from customers, many, many, many transactions, you know, perhaps millions of transactions in the period from January -- or certainly the intense period of January of '22 through to November, when FTX Digital failed. And in aggregate, those customer flows, receipts and payments, looked to be in the order of 13 billion U.S. Dollars. So bank statement evidence, I -- I would -- I would include, as well.

Mr. Glueckstein referred to conversations with -- with employees. Again, many of the employees had left by the time we were appointed, but some fairly key ones remained. The then co-CEO and COO was still available to us. I'm not referring to Mr. Bankman-Fried. And she was able to give a view on migration, migration of customers between FTX Trading and -- and FTX Digital, and also to point out that a KYC

exercise, know your customer exercise, was carried out per the migration plan.

As Mr. Glueckstein says, the migration plan is a fairly short document, five pages. But it refers to a GAAP analysis of the KYC requirements needed to comply with the -- with the license granted in the Bahamas. And I understand that there was a lot of activity in -- during 2022 to contact customers, let them know of the intention to migrate their contracts from Trading to Digital and, for the purposes of that, to seek additional evidence from a KYC perspective.

The reason for that is that the prior requirements were less onerous. So -- so, before the Bahamian license, FTX was required to have evidence on file of -- for institutional customers of the details of ultimate benefit -- beneficial ownership -- ownership for 25 percent and above. The requirement for the Bahamas license was 10 percent and above.

So there was a telephone campaign -- I believe with messages, as well, but we don't have access to those -- to reach out to customers to achieve that and put the -- the -- the supplemental KYC information on file.

I fear that I've perhaps not exhausted the signposts that lead me to believe that there's a question to be answered on migration. The -- but -- but I will stop, other than just mentioning one more, which is -- I'm not a lawyer, but the terms of service dated 13 May, 2022 also make it very

clear to a layman's reading and understanding that the majority of the services were to be provided by FTX Digital from that date.

And it's our understanding, not least from evidence provided by the debtors, that those terms of service were posted on the website and it would -- would have been publicly available to customers and the world at large.

And indeed, when customers, after the new terms of service, wired funds to the platform, the international platform, it's my understanding that they saw a popup on their screen that -- that let them know that they were no longer sending money to an Alameda affiliate, but would actually be sending funds to an account in the name of FTX Digital.

To my mind, all of those things lead me to think I need to go and get some help from the Court and perhaps other -- other experts in -- to determine what that all means.

Q Mr. Greaves, you -- everything you just walked through, you don't have documentation showing a customer ever saw a popup when they deposited money, correct?

A I have some evidence of that, but I -- the place where I want to look for it, the debtors have denied us access.

Q You have not -- you are not aware, as contemplated by the migration plan, of FTX Digital Markets reporting to the Securities Commission of the Bahamas any number of customers

that had been migrated from FTX Trading to FTX Digital, correct?
A I do not have confirmation of that, no.
(Pause in proceedings)
Q As you sit here today, you do not know whether any customer actually migrated from FTX Trading to FTX Digital Markets, correct?
A As I sit here today, my strong personal and professional view is that there's a body of evidence that suggests that they did. I'd like, if it's possible, to see more evidence and, if that isn't possible, to seek directions from the Bahamas Court on whether migration happened.
Q And if this Court answers the questions posed in the adversary proceeding with respect to which customers, if any, are customers of FTX -- of the FTX Debtors or FTX Digital Markets, you will have that answer, correct?
A I -- I'm not -- I'm not asking this Court to do anything or not do anything and I'm not trying to prevent the debtors from making any application in this Court. We're represented here, we're in the Chapter 15 proceedings. All I'm saying is, unless the Bahamas Court instructs me otherwise, I do not have discretion to not go to the Bahamas Court.
Q If this Court, Mr. Greaves, leaves the automatic stay in place, you will have fulfilled your duties because you asked to go to the Bahamas Court, correct?

A I believe my duty is to go to the Bahamas Court. And as I said, whilst we're supervised and under court guidance, in my experience, courts, including the Bahamas Courts, will expect officeholders to use their tenacity and their professional experience to get as far as they can.

I think that's the situation we're in. And I, personally, would like comfort from the Court that appointed me that I'm not falling afoul of any of my duties.

Q If this Court were to rule that it was going to determine the issues set forth in the adversary proceeding prior to any modification of the stay, you will have done your job in discharge of your duties, correct?

A That may be very helpful if that happened, but I'd still have to go to the Bahamas Court. I'm personally just failing to see how I can not seek directions from the Bahamas Court, and that's the question, I'm -- I'm trying to ask.

Q Okay. Thank you.

MR. GLUECKSTEIN: No further questions, Your Honor.

THE COURT: Okay. Thank you.

Any other cross?

MR. PASQUALE: Yes, Your Honor. Ken Pasquale from Paul Hastings for the official creditors' committee.

CROSS-EXAMINATION

BY MR. PASQUALE:

Q Good morning, Mr. Greaves.

A Good morning, Mr. Pasquale.

Q Mr. Greaves, you said a number of different times in your testimony so far that the application is to seek direction from the Bahamas Court, correct?

A Correct.

Q And that there are certain questions you want to raise with the Bahamas Court, correct?

A Yes, that's right.

Q But isn't it correct that what you really want to do in the Bahamas Court is commence litigation to answer those questions, isn't that right?

A I wouldn't agree with that characterization, no. That could potentially be a consequence of the application, but I don't know. I am certainly of the -- perhaps even those in the building, I am the least qualified from a legal perspective to form a view on that.

Q Doesn't the application itself raise -- if you would, you have as part of your declaration -- let me make sure I reference the right exhibit, its Exhibit A-1 to your declaration. There is a section of the proposed application that speaks toa appointment of representative creditors. Are you aware of that?

UNIDENTIFIED SPEAKER: (Inaudible).

MR. PASQUALE: Oh, I assumed he had one. Okay.

UNIDENTIFIED SPEAKER: (Inaudible).

MR. PASQUALE: Yeah, let's do that.

THE WITNESS: Thank you. I believe I recall it, but I think --

MR. PASQUALE: I'm sorry.

THE WITNESS: No, no, no. I think it would be prudent for me to refamiliarize myself.

MR. PASQUALE: Apologies, Your Honor.

THE WITNESS: Happy to look at your copy if it helps.

MR. PASQUALE: Mine is marked up.

UNIDENTIFIED SPEAKER: Your Honor, can I approach the witness?

THE COURT: Sure.

THE WITNESS: Thank you.

MR. PASQUALE: Thank you.

THE COURT: Is this also Exhibit 8 in the joint exhibits?

MR. PASQUALE: I don't think it is, Your Honor. I think that is just the summons.

UNIDENTIFIED SPEAKER: No. I think it is, Your Honor.

MR. PASQUALE: Our binder didn't have it.

UNIDENTIFIED SPEAKER: It looks like its Joint Exhibit 8.

THE COURT: Okay. I've got it. Thank you.

MR. PASQUALE: Thank you, Your Honor.

BY MR. PASQUALE:

Q Mr. Greaves, I'm looking at your declaration, just to be consistent. It's Exhibit A-1. Is that the application that you proposed to submit to the Bahamian Court?

A Mr. Pasquale, I apologize. In the bundle I've got the -- yes, I apologize. It is. I have it. A-1 is the application.

Q You do have it?

A Apologies.

Q Let me ask you to turn to page 27 of that application.

THE COURT: Okay. So, its not Joint Exhibit 8 because there is no --

MR. PASQUALE: It is not, Your Honor.

THE COURT: Joint Exhibit 8 only has five pages.

MR. PASQUALE: Joint Exhibit 8 just has the summons.

THE COURT: Yeah.

THE WITNESS: So, I believe that was my confusion, Your Honor. Am I referring to page 27 of the affidavit supporting the summons?

MR. PASQUALE: Correct.

THE WITNESS: Thank you. I am almost there.

MR. PASQUALE: So, Your Honor, to be clear, I don't know if you have it in front of you its Exhibit A-2 is the fifth affidavit in support of application. Its Exhibit A-2 to Mr. Greaves declaration.

MR. GLUECKSTEIN: Your Honor, not to complicate matters further here, if I may, though, that document is attached to Mr. Greaves declaration. But that proposed affidavit is not in evidence at this hearing because it is of no evidentiary value and there is no dispute about that. So, I think that is why you only the summons which states the claims to be brought. That was moved into evidence this morning as part of the joint exhibit list, but that affidavit is not in evidence at this hearing that Mr. Pasquale is referring to now.

THE COURT: All right.

MR. PASQUALE: Thank you, Mr. Glueckstein.

THE COURT: I assume it's being used for impeachment purposes.

MR. PASQUALE: It is, Your Honor.

THE COURT: Okay.

MR. PASQUALE: I will try to ask a couple of questions. I am not seeking to put the document into evidence.

So, thank you, Mr. Glueckstein. Thank you, Your

Honor.
BY MR. PASQUALE:
Q So, I think we're together, Mr. Greaves, you're page 27, Section 16?
A I am.
Q It says appointment of representative creditors?
A Yes.
Q Does that section propose various litigation to answer certain of the questions that you proposed to raise with the Bahamian Court?
A I will just read it again, if you don't mind, to myself.
Q Yes.
(Pause)
A Mr. Pasquale, I have read down to the end of 114. My understanding of this section is that its describing potential steps once the application is made to the Bahamian Court. And as has been established, I shouldn't talk to how proceedings run in the Bahamian Court. It is not my area of specialty, but I understand that its likely that such matters would be -- the Bahamian Court would be assisted in its understanding of these matters in giving directions by seeking to hear the position of creditors or customers. That is my understanding of this section.
Q And those creditors have not yet appeared in the

Bahamian case?

A Not in the sense that I understand it. I don't believe that creditors -- I can't be certain, but my recollection is that creditors have not appeared in the Bahamas case.

Q And you understand -- do you understand, Mr. Greaves, that my client, the official committee of unsecured creditors, and these debtors' Chapter 11 cases represent the interest of, among others, all of the customers of the international exchange?

A I do understand that to be the position of the UCC.

MR. PASQUALE: Thank you. No further questions, Your Honor.

THE COURT: All right. Thank you.

CROSS-EXAMINATION

BY MR. SABIN:

Q Good morning, Mr. Greaves.

A Good morning.

Q I am Jeff Sabin from Venerable LLP who represents a group of ad hoc international customers who filed a statement in partial support of your motion. I will be very brief. I have three questions.

First, do you believe it is within your duties to negotiate a protocol for other arrangements for the Bahamas Court and/or this Court to decide the non-US law customer issues as you define them in your draft application?

A My understanding or believe is that that would be a matter for the Courts, the Court or Courts. I could certainly imagine that that would require input from the JPLs.

Q If this Court were to decide to order or to suggest a procedure for a joint hearing of this Court and the Bahamas Court to adjudicate those non-US customer issues, would you be in favor?

A I would be guided by the Court that appointed me. But if I take the spirit of the question, I'm interested in finding the answers. So, I would like to make the application to the Bahamas Court. I don't think I then get to influence how the two Courts decide to work together.

Q Finally, would –- if that were to happen, a suggestion of a joint hearing, would that meet your duties as you understand it?

A If the Bahamas Court were able to confirm that (indiscernible) or satisfy the threshold for us to carry out our duties then we could live with that.

MR. SABIN: Thank you, sir.

THE COURT: Anyone else wish to cross before I go back for redirect?

(No verbal response)

THE COURT: Okay. Redirect.

MR. ZAKIA: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. ZAKIA:

Q Just briefly, Mr. Greaves. Mr. Glueckstein asked you some questions concerning a communication that the JPL's sent to the 2.3 million customers identified on the customer list. Could you just tell us what was the purpose of that communication?

A Yes. Simply to do our best with the tools we have available to satisfy the duty of identifying and contacting our creditors. It was the only list we had available at the time. As was mentioned, that the two letters that have gone so far explain the nature of our appointment, explained what we were not appointed over.

I am making it very clear of the existence of the 134 debtor proceedings before this Court. And inviting those who may believe that their creditors of FTX Digital. I have had people reaching out to me –- you know, customers reaching out asserting that they are. So, the purpose was to invite them to log their basic contact details on our case website. I believe at the moments its main address and email. So, that was the purpose of the contact.

Q Are communications such as this unusual steps for you to take in your role as a liquidator?

A No. Its primary duty 101, if I was looking after an entity with four or five creditors, I might not put up a

website. In this case the evidence suggests that the number is far, far greater then that. So, reaching out electronically and having a basic claims website with information and frequently asked questions would be very normal.

Q Have the JPLs ever represented to anyone that they have any authority to act on behalf of the U.S. Chapter 11 debtor?

A I certainly have not and I am not aware that any of the JPL's have.

Q And in the communications that you sent to customers have you taken any steps to explain that you do not have authority to act and are not acting on behalf of any of the U.S. Chapter 11 debtors?

A Yes, we have. I believe that we have made that as clear as possible. And, where counterparties, creditors or even debtors have reached out to us it's clear or reasonably clear to me that they should be reaching out to the debtors. I have passed on the contact details and explained why I can't deal with their query.

Q Now shifting topics, Mr. Glueckstein asked you about the unrestricted cash position of the JPLs. Do you remember that?

A I remember, yes.

Q Okay. I think you told him that with regard to cash that wasn't held for the benefit of customers or arguably

held for the benefit of customers, your current balance was less than $1 million?

A Yes. I don't know the exact number but I think that would be, you know, a few hundred thousand dollars left.

Q Will it be possible for the JPLs to take any steps to fund their efforts on behalf of the administration the provisional liquidation given that cash situation?

A Only with permission of the Bahamas Court.

Q And what would you need permission from the Bahamas Court to do in order to accomplish that?

A I can think of two scenarios. The order appointing us and the statutory duties and powers laid out in the act, in the Bahamas basically divides up powers that the JPLs have between those that they can carry out themselves and those for which they need leave, or sanction, or approval of the Court.

In that latter bucket I can think of -- within the power of the JPLs to make such an application would be to seek permission to borrow funds. That would be permissible with sanction of the Bahamas Court. And it would also be possible, to my mind, to make an application to the Bahamas Court for a determination on whether the funds thought possibly or likely to be held in trust for customers were, indeed, trust funds or, otherwise, were generally available to carry out the estate.

I would say that second one is a core plank of the application that we're actually making.

Q And if you were prevented from the automatic stay from making that application what, if any, consequences would there be for the joint provisional liquidation?

A You know, I am not going to stop trying to do my job and fielding inquiries, which we still receive, you know, hundreds each month. But in terms of substantially moving this forward we would not be able to carry out our duties and not be able to -- never mind complete the provisional liquidation, we wouldn't even be able to do our basic roles.

Q So, if you were to follow the course that Mr. Glueckstein suggested and not make any applications to the Bahamian Court while you litigate with the debtors for however long, what would be the impact on the JPLs cash position as that occurred?

A Well, we have already committed expenditure beyond the funds that we have. So, we would be in an impossible situation.

MR. ZAKIA: Thank you. Your Honor, no further questions.

THE COURT: Thank you. Thank you, Mr. Greaves. You may step down.

(Witness excused)

MR. ZAKIA: Your Honor, our next witness is our

foreign law expert, Metta MacMillan-Hughes KC. She submitted a declaration at Docket No. 1193. My understanding from the debtors is they do not intend to cross her; therefore, we were not going to do a direct. We would stand on the declaration. She is in Court and available to answer any questions that the Court or any other party may have. But, unless you have any questions I would just offer her declaration at this time.

THE COURT: Okay. Any objection?

UNIDENTIFIED SPEAKER 1: No objection, Your Honor.

UNIDENTIFIED SPEAKER 2: No objection, Your Honor.

THE COURT: The declaration is admitted without objection.

(Macmillan-Hughes KC declaration received into evidence)

THE COURT: I don't have any questions. Does anyone else wish to ask the witness any questions?

(No verbal response)

MR. ZAKIA: Thank you, Your Honor.

THE COURT: Thank you.

MR. ZAKIA: So, that completes the evidentiary portion of the JPL's case. So, at this time we would rest.

THE COURT: Thank you.

MR. GLUECKSTEIN: Good morning, again, Your Honor. Brian Glueckstein of Sullivan & Cromwell for the debtors.

As Mr. Zakia previewed this morning, the debtors have one witness this morning and we would like to call Mr. Edward Mosley to the stand.

THE COURT: Mr. Mosley, please come forward, take the stand, and remain standing.

THE CLERK: Please raise your right hand. Please state your full name and spell your last name for the Court record, please.

MR. MOSLEY: Edgar William Mosley, II, M-O-S-L-E-Y.

EDGAR MOSLEY, II, DEBTOR WITNESS, SWORN

THE CLERK: You may be seated. Your Honor.

MR. GLUECKSTEIN: All right. Your Honor, may I approach the witness and hand him a copy of his declaration?

THE COURT: Yes.

MR. GLUECKSTEIN: Does Your Honor need a copy?

THE COURT: No –- well, were these included in the joint exhibits?

MR. GLUECKSTEIN: They were numbered, Your Honor. It's numbered as Joint Exhibit 39.

THE COURT: Okay. I have it. Thank you.

DIRECT EXAMINATION

BY MR. GLUECKSTEIN:

Q Good morning, Mr. Mosley.

A Good morning.

Q Is the declaration that is in front marked as Joint Exhibit No. 39 the declaration that you submitted to this Court in connection with your testimony this morning?
A Yes, it is.
MR. GLUECKSTEIN: Your Honor, Mr. Mosley's declaration was filed at Docket 1411. And we would ask that it be moved into evidence.
THE COURT: Any objection?
UNIDENTIFIED SPEAKER: No objection.
THE COURT: It's admitted without objection.
(Mosley declaration received into evidence)
BY MR. GLUECKSTEIN:
Q Mr. Mosley, can you give the Court a brief background of your experience as a restructuring professional?
A Sure. I have over 20 years of experience doing restructurings, corporate side, mostly on the company side. Most of the time they're in Chapter 11 proceedings of some sort, but I do, do some out of Court. I have worked at Alvarez & Marsal since 2008. And in general, I do some of our larger more complex cases.
Q Can you please describe for the Court your current responsibilities at Alvarez & Marsal with respect to the Chapter 11 debtors?
A Sure. I oversee a team of professionals who I organize into various work streams. Those work streams are, you know,

wide. We do cash. So, part of the job there is to not only secure, but also to project cash balances for the various debtors. In addition, we have a crypto team who are charged with identifying and securing the crypto and digital assets of the estate. That is more complicated than it seems because, as part of the debtor's operations prepetition, there were balances held at third party exchanges. So, we are in the midst of trying to get all those digital assets back.

In addition, there is a claims process that I oversee where we are setting up a claims portal and working with the claims agent on a process of how we will take and use the information as part of the bar date for the claims of the various entities.

Another big work stream for us right now is that the plan formation structure and the financial analysis around various plan structures. There are -- we have a multitude of work streams, but those are the big ones that I think are relevant to the question.

Q And are you the lead professional at Alvarez & Marsal on all those work streams for the Chapter 11 debtors?

A Correct. I lead the entire team.

Q Mr. Mosley, if you could just briefly look at your declaration that is in front of you at Paragraph 20.

A I'm there.

Q You have a statement there with respect to that states: "The debtors are not aware of any customers of FTX DM who are not also creditors of FTX Trading or other debtors."

Do you see that?

A I do.

Q And that is your testimony as set forth in your declaration at Paragraph 20, correct?

A Correct.

Q Mr. Mosley, could you please explain to the Court, in a bit more detail, what you are saying in that statement, intending in that statement?

A No problem. In the case of the international or .com exchange that set of customer claims is the one in question. The JPLs have said that some portion of that exchange is their customer with the remainder being with the debtors at FTX Trading.

In fulfilling our duties when we think about if one or more customers of the .com exchange were, indeed Digital Markets customers I don't think that the US debtors would be able to say that a migration of that customer did not allow that customer to make a claim with Trading. I say that because, you know, first and foremost, the terms of service, the counterparty is FTX Trading, which is the debtor. Further, I do believe that all of the customers have or will have the ability to make a fraud claim against the debtors.

That claim would go against FTX Trading.

I don't think that somehow migrating a customer to Digital Markets would absolve the debtors of that claim. So, thus, in my opinion, any claims brought by customers against Digital Markets those same customers would have a claim against our debtors.

Q Mr. Mosley, if you could turn to Paragraph 21 of your declaration.

A I'm there.

Q You discuss, in Paragraph 21, of your declaration prejudice to the debtors if the proceedings in the Bahamas Court were to proceed. Is that right?

A Yes.

Q What types of prejudices do you believe the debtors will suffer if the stay is lifted and the application is filed in the Bahamas Court?

A I think of the types of prejudices in, sort of, three buckets. There is the additional costs that would be incurred by the estate for having a duplicative litigation on the same topics. I think of the confusion to our claims process and our overall plan process that would occur. And the final would be a potential delay in our case. I think there is potential to have, you know, our process delayed in some way.

Q With respect to the cost aspect of the prejudice to the

debtors, can you elaborate some for the Court on what you mean in the types of increased costs you are contemplating?

A So, the process of having a litigation in the Bahamas on the same, sort of, issues that are in the adversarial proceedings would require or could require the debtors to get additional legal counsel down in the Bahamas and for whatever sort of local law and rules that are there.

All of the professionals that are currently in our case would need to come up to speed on what their duties are and how they will conduct themselves in those Bahamian proceedings. So, all of that additional work would need to happen. There would be duplicative cases. There would be more hearings that folks would have to travel for. Just in general there would be additional expert testimony required.

I don't know if the requirements there are different, but I am told that there are, you know, additional expert witnesses needed. That isn't just for the debtors. All of the stakeholders would need to be present; the UCC, the ad hoc committee, any other stakeholders could be required to go down there and make sure that their properly heard in that case.

Q You mentioned a creditor confusion as prejudice. Can you explain to the Court a little bit more about what you have in mind, in your opinion, with the creditor confusion?

A Some portion of the creditors that are involved in our

case will be confused as to which case they need to appear, place a claim in, participate in. Some may decide to appear in both, some may choose one or the other and may be incorrect at which one they need to be involved in.

Having two claims portals up at the same time for the same population of creditors, the ones in question being anyone in the .com exchange, of FTX.com, is clearly confusing for someone who is not doing this for a living. There will be a set of customers who have no problem with that, but I'm sure there is a set of customers who will be confused in some way.

Q With respect to -- I think the third thing you mentioned, Mr. Mosley, was potential for delay. What is, in your opinion, a potential delay caused by duplicative proceeding in the Bahamas?

A It's a potential. I'm not saying that it's a required delay, but there could be a delay in our plan process if we need to wait until the Bahamian Court hears the litigation on that issue and then would have to put it in front of Your Honor as well. Every delay, though, in this case is expensive. There are a lot of professionals involved and the longer the process takes, the more it costs. So, the debtors are very focused on trying to shorten the amount of time, any potential delay is one that we take seriously.

Q Mr. Mosley, looking, again, at Paragraph 21 of your

declaration there are some bullet points there including the first bullet point that has a description of attempts to cloud title with respect to assets. Can you give the Court an example of what you are referring to in that first bullet point in Paragraph 21 of your declaration?

A Certainly.

Q This 7.7 billion that's been referenced by the JPL in a few places, most notably in its interim report, in my opinion is misleading. I am not saying that the number is incorrect. I am saying it is choosing to only show one side of the ledger. In this case these are amounts transferred from Digital Markets to a debtor. It ignores the fact that there corresponding amounts from debtors to Digital Markets. Its just taking a gross number and not giving the reader the benefit of the net amount.

In fact, its my opinion that if you totaled up the customers amounts that were transferred out, the amounts to FTX Trading, and the amounts to Alameda, and you compared that to the amounts coming in to Digital Markets there was a net inflow into Digital Markets. But at the very least, the amounts sent out of the 7.7 billion are dwarfed by the amounts required for the customer withdrawals. The JPL purports are, you know, customers.

So amounts sent out to Alameda or Trading that were then sent onto customers I don't view that as amounts due to

Digital Markets. And in the interim report where this number sits, it sits in the receivable section. You know, it intimates that Digital Markets is owed $7.7 billion from the debtors. I feel that is misleading. They have used that number in lots of places.

Once, again, I don't think that its incorrect. You know, I see those transfers. I think its incomplete and purposely incomplete. So, that is what I am talking about when I say clouding title to the assets. They are saying that somehow Digital Markets is entitled to the assets of the debtors.

MR. GLUECKSTEIN: Thank you, Mr. Mosley. No further questions.

THE COURT: Thank you. Anyone else want to question in support?

UNIDENTIFIED SPEAKER: No, Your Honor. Thank you.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. ZAKIA:

Q Mr. Mosley, good morning.

A Good morning.

Q My name is Jason Zakia. I am one of the lawyers from the JPLs. I am going to ask you a couple of questions if that is okay.

A Yes, sir.

Q So, first of all, I would like to talk to you about the terms of service that you referred to on your direct examination. There were various different terms of service posted to the FTX.com website at various times. Is that correct?
A Yes, sir.
Q So the first ones that we are aware of are what, I believe, you referred to as the 2019 terms of service?
A Yes, sir.
Q And when were those posted to the FTX.com website?
A In 2019.
Q And by whom were those terms of service posted to the FTX.com website?
A If you are saying who the counterparty is who posted it, I mean its FTX Trading. That is the counterparty. If you are asking whether or not its -- you know, who is the actual person who mechanically put it onto the website I don't know who it was.
Q Okay. So, if I understand correctly, someone acting on behalf of FTX, but the records of the company don't indicate which individual posted the 2019 terms of service to the 2019 website -- sorry, to the FTX.com website in 2019, right?
A Correct. There is just a record of it being put onto the website.
Q And at the time that that happened the CEO of FTX was

Sam Bankman-Fried?
A Correct.
Q Okay. And other then the posting to the website the records of the company don't indicate any separate step or separate notice was given to customers of the 2019 terms of service, correct?
A Correct.
Q Now at some point the 2019 terms of service were replaced by later terms of service conveniently referred to as the 2020 terms of service, is that correct?
A Correct.
Q Okay. Those were posted to the FTX.com website in 2020?
A Correct.
Q And the records of the company are not sufficient for you to be able to know which individual posted the 2020 terms of service to the FTX.com website, correct?
A Correct.
Q At the time that that happened in 2020 the CEO of FTX was Sam Bankman-Fried, right?
A Correct.
Q Now its your understanding that when the 2020 terms of service were posted to the 2000 –- sorry, to the FTX.com website those terms of service replaced the 2019 terms of service?

A Yes.
Q And so the relationship between FTX and its customers was governed by the 2019 terms of service from the time that was posted until the 2020 terms of service were posted, right?
A I am not a lawyer, but, yes, from a business persons perspective, yes.
Q Okay. You talk about this in your declaration, right?
A Yes, sir.
Q And, in fact, in Paragraph 10 of your declaration you say the relationship between customers and FTX.com Trading platform were governed by the 2019 and 2020 terms of service, right?
A Correct. I think Paragraph 10 speaks for itself.
Q And you have described for us the process by which those two terms of service were posted to the website and disclosed to customers, right?
A Yes.
Q Now I would like to ask about the 2022 terms of service. Do you -- the 2022 terms of service are Joint Exhibit 11. You don't have a copy of that with you, sir, do you?
A No, I do not. I am familiar with the 2022 terms of service.
Q Okay. May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. ZAKIA:

Q Sir, I have handed you what's been marked and admitted as Joint Exhibit 11. Is that the 2022 terms of service?

A It appears to be, yes.

Q And these terms of service are dated May 13th, 2022 at the top of page 1?

A They are.

Q And is that the date on or about which these terms of service were posted to the FTX.com website?

A On or about, yes.

Q And am I correct that just like with the 2019, 2020 terms of service the records of the company are not sufficient for you to be able to determine which individual posted those terms of service to the website?

A Correct.

Q And you address this in Paragraph 13 of your declaration, right?

A Yes. I am referring to Exhibit H, but that is the 2022 terms of service and my declaration.

Q Correct. And what you say in Paragraph 13 of your declaration is in May of 2022 the records indicate that Mr. Bankman-Fried and/or others acting at his direction introduced new terms of service for the FTX.com customers by posting them to the FTX.com website. Do you see that?

A Yes.
Q Okay. And, again, I think you just told me you don't actually know which person at FTX posted these to the website?
A Yeah. I am referring to Mr. Bankman-Fried because he's the CEO of FTX.
Q Okay. So, the basis for your statement in Paragraph 13 of your declaration with regard to the 2022 terms of service were that at the time Mr. Bankman-Fried was the CEO of FTX and so whoever did it must have been working, in your view, at his direction?
A I am saying that –- I am using Mr. Bankman-Fried in that sentence because in his capacity as CEO he was directing the operations of FTX. So, its his decision to put that on the website.
Q Okay. Just as he was the CEO directing the operations of FTX with respect to the 2019 and 2020 terms of service at the times that those were posted to the website?
A Correct.
Q And, in fact, sir, as far as the records of the company indicate and as far as you are aware about the process, the mechanical process by which the 2019, 2020 and 2022 terms of service were loaded to the website is the same?
A Mechanically I think its the same.
Q And with respect to the notice given to customers or

the lack of separate notice given to customers of the posting of the terms of service that's the same with regard to the 2019, 2020, and 2022 terms of service, right? No difference?

A I don't know -- I think it's a legal determination what is required for --

Q Well, I wasn't asking you what was required. I was just asking whatever was given was the same for all three?

A Yeah, I wasn't finished. Sorry. I am not a lawyer, so I don't have the legal determination of what is required, but I think that mechanically the same notice was given for all three.

Q Now I would like to ask you a couple of questions about Joint Exhibit 11 which is the 2022 terms of service. I think you told us on your direct testimony that FTX Trading was the counterparty with the customers with respect to the terms of service. Did I hear you correctly?

A Yes. In Paragraph 1, FTX Trading is the counterparty to the customer.

Q And you are referring to Paragraph 1 of Joint Exhibit 11 which says the following terms and condition of service, together with any documents, expressly incorporated herein constitute an agreement between you and FTX Trading, a company incorporated and registered in Antigua and Barbuda, or a service provider in respect of a specified service. Is that what you are referring to?

A Yes.
Q Okay. So, this is an agreement between customers and either FTX Trading or a service provider to the extent there are service providers that will be providing specified services, right?
A Correct. FTX Trading is the only name in that. I agree, it does say or service provider.
Q Right. And you are not a lawyer, and I'm not asking you for any legal opinions as to the legal impact of that, but that is what this provision says.
A Yes.
Q Okay. And if we look on the next page, Section 1.3 of the 2022 terms of service which is helpfully bolded with the words important, that provision says you acknowledge and agree that any specified service referred to in a service schedule shall be provided to you by the service provider specified in that service schedule. In such case the specified service shall be provided to you on and subject to the terms with reference in these general terms to FTX Trading being read as a reference to the service provider. Is that correct?
A That is what is says, yes.
Q Okay. And am I correct, sir, that in the service schedules, which are attached to the 2022 terms of service which are Joint Exhibit 11, FTX Digital Markets is a

specified service provider.
A They are one of the service providers, yes.
Q So, for example, if we look at Schedule 2, service schedule, which is the page 32 of 63 on the Court filed copy. Do you have that, sir?
A Yup.
Q FTX Digital Markets Ltd., is identified as a service provider in Schedule 2?
A I see that, yes.
Q Okay. And in Schedule 3, which is on the Court filed page 33 of 63, in that service schedule FTX Digital Markets is identified as a service provider, right?
A I see that, yes.
Q And if we look at Schedule 4, which is page 35 of 63, FTX Digital Markets is identified as a service provider. Do you see that?
A Yes.
Q And if we look at Schedule 5, which is –- well, they're all in order, so I'm sure you are following along. FTX Digital Markets Ltd., is identified as a service provider, right?
A Yes.
Q And if we look at Schedule 6 FTX Digital Markets is identified as a service provider?
A Correct.

Q And if we look at Schedule 7 FTX Digital Markets is identified as a service provider?
A I see that, yes.
Q Okay. So, at least, with respect to the 2022 terms of service with respect to the specified services identified by each of the -- sorry, with respect to the services addressed by each of the schedules that we just reviewed that provide that FTX Digital Markets will be the service provider these terms of service are an agreement between the customer and FTX Digital Markets, right?
A I don't -- that is a legal determination. I think that there is more that goes into it. I am not a lawyer though, so I can't really tell you what the legal determination is. I am happy to agree with you when you point to the document and say that Schedule 1 through 6 or 7 say Digital Markets, but I don't -- I think on our side of the house when we say who is the counterparty we have not made the legal determination that FTX Digital Markets is the counterparty of this agreement.
Q Fair enough. And you are not offering any legal opinion?
A No.
Q And I didn't mean to ask you for one.
Would it be fair to say that from your perspective that is a legal question that you would like to have the answer

to?
A That's a legal question for sure and the determination of that question effects a lot of parts of the case.
Q So, it's a question that some Court will need to answer?
A Yes, sir.
Q Okay. And if we look, last question about this exhibit, its Section 38.11 of Joint Exhibit 11 which Section 38.11 of the document is on page 28 of 63.
A I see it.
Q Okay. The governing law of the 2022 terms of service is English law, correct?
A That is what it says, yes.
Q Now in your declaration, in Section B of your declaration, Paragraphs 14 through 18, you offer some testimony concerning the efforts by the securities commission of the Bahamas to secured digital assets at the time around the bankruptcy filing, right?
A Yes, sir.
Q I just want to be clear, sir, other then the fact that one of the JPLs, Mr. Brian Simms, was copied on one email which you refer to as Exhibit, I believe, L of your declaration you don't have any personal knowledge about what, if any, involvement the JPLs had or didn't have in anything that the securities commission did with regard to the

securing of the digital assets, right?
A There is more then one, you know, set of communications, but as attachments to my declaration we only put the one in there. So, if you are referring to the attachments, I agree, there is only that one attachment. That is the one which Brian Simms was, you know, cc'd on the communication from -- the official communication from the commission to Mr. Sam Bankman-Fried.
Q And you weren't -- you don't have any -- other then things that you have seen in documents, which the Court will consider whatever evidence was admitted, but other then that you don't have any personal knowledge of anything Mr. Simms or anybody did or didn't do with regard to the securing those digital assets, right?
A Correct. I don't have any personal knowledge of it.
Q I would like to talk to you a little bit about prejudice which is some of the testimony that you offered on direct examination in response to Mr. Glueckstein's questions. One of the things I think you said was the debtors were prejudiced by the decision of the JPLs to establish a claims portal?
A So, what I said in my direct was what are the ways that the debtors could be prejudiced and then inside here there are examples of actions of the JPL that have already effected the debtors. One of those being the claims portal.

Q And the claims portal exists today, right?
A Yes, sir.
Q Okay. The filing of the application, which is the subject of this motion, isn't going to create or destroy the claims portal, right?
A I don't know what their plans are.
Q But it exists independent of the application which the JPLs are seeking, I believe, from the automatic stay with respect to it.
A Yeah. I don't know what they are going to do based on the decision in front of the Court today.
Q Okay. And with respect to -- well is it your understanding that part of the issue of this hearing is they're asking Judge Dorsey to order the debtors to -- sorry, order the JPLs to take down the claims portal?
A No. Today is just a lift of stay motion.
Q Okay. I am going to direct your attention to Joint Exhibit 54 and I will hand you a copy.
MR. ZAKIA: May I approach, Your Honor?
THE COURT: Yes.
BY MR. ZAKIA:
Q Joint Exhibit 54 is the communication which the JPLs sent to customers which you referred to on your direct examination, is that correct?
A Yeah. Give me one second, I'm looking for which

exhibit it is.
Q Sure. The exhibit number is on the bottom right hand corner.
A That is the joint exhibit number. I am looking for the exhibit to my --
Q Oh, okay.
A Okay.
Q If we turn, please, sir, to the second page of Joint Exhibit 54, interaction with the Chapter 11 proceedings this communication states the provisional liquidation process for FTX Digital is running independently of, but in parallel with the ongoing Chapter 11 proceedings in the US, customers of FTX.com who have submitted claims against the entities covered by the US Chapter 11 proceedings are not prevented from registering their details via FTX Digital claims portal and vice versa. Do you see that?
A I see that.
Q Now, one of the other areas of prejudice that I believe you identified during your direct examination was cost.
A Yes.
Q You haven't completed -- you haven't quantified any estimate of cost, of what it would cost the Chapter 11 debtors to litigate the application in the Bahamas; have you?
A I'm referring to there are clearly a set of additional costs that all of the stakeholders inside of our Chapter 11

would incur to have duplicate process in the Bahamas. I don't usually put together professional fee forecasts for other professionals, but, you know, I put together many budgets on, you know, professional fees in various cases. So I have an understanding of the sort of quantum of those and what we would -- what would be the other impacted professionals that would have to go down there.

So, no, I haven't prepared a specific schedule, but I've got -- I have enough knowledge of how professional fee forecasts work to say it's a number.

Q Okay, but my question is have you done anything to quantify what that number is?

A Other than think through what the mechanics would be, no, I haven't put down on paper a forecast.

Q Okay. And if you haven't quantified what that number is, I assume you haven't compared whatever that number is to the total amount of administrative expenses that have been incurred by estate professionals in the course of this Chapter 11 case?

A For the purpose of me saying that it's prejudice is that it would be additional costs, from my process, for a duplicative set of, you know, matters that would need to be decided by a judge. So this would be on top of whatever I have in my forecast, so that's why I've said it's additional costs. I don't compare it to what the administrative burden

for the whole case is, I compare it to what would it be versus my base case, which is a Chapter 11. And so it's clearly on top of because it's the same matters in our adversarial proceeding being heard somewhere else in which I have to do additional things.

Q Could you just give me, what -- if you know, what are the total professional fees incurred by the debtors to date in connection with the Chapter 11 cases?

A I don't have that offhand. It's part of, you know, the record, though; all of the fee applications are on file, you could go and add those together.

Q Okay. It's fair to say, whatever the incremental costs of the Bahamian proceedings would be would be fairly small in comparison to the total amount of costs incurred by these estates for professionals so far?

A Any amounts that would be in addition would come right out of the creditors' pocket. So, maybe it's small in comparison to the total professional fees, but it clearly would mean something to the creditors.

Q And you don't have any experience in legal proceedings in the Bahamas; right?

A No, I've never appeared in the Bahamas.

Q And I think we established you're not a legal expert offering any legal opinions; right?

A I'm not a lawyer, no.

Q So you're certainly not offering any opinions concerning the Bahamian legal process?
A I am not.
Q And one of the things you talked about, which I assume is related to costs, is also delay?
A Yes, sir.
Q Okay. You don't have any basis to know or opine on how long the Bahamian court would take to dispose of the issues raised in the application; right?
A Yeah, I referenced potential delay, I don't know how long or if.
Q And you don't know how long it might take this Court to deal with any of the overlapping issues in the Chapter 11 cases?
A Correct. It's required, so it's in -- it's built into our timeline.
Q Okay. And since you don't know how long it would take in the Bahamas and you don't know how long it would take in Delaware, I assume it's fair to say you are not in any position to compare the speed with which the two different courts could address these issues; right?
A I am not in a position to compare the speed between the two courts, no.
Q Okay. One of the things you addressed, sir, in paragraph 20 -- well, 24 of your declaration deals with an

April 27 letter from the bar counsel in the Bahamas to the debtors' Bahamian counsel. It's Exhibit N to your declaration and is Joint Exhibit 50. Is that correct?

A Exhibit N, yes.

Q Do you have a copy of that up there with you?

A No.

Q Okay.

MR. ZAKIA: May I approach, Your Honor?

THE COURT: Yes.

THE WITNESS: Thank you.

BY MR. ZAKIA:

Q So Joint Exhibit 50, which is Exhibit N to your declaration, who is Peter Maynard?

A Peter Maynard is an attorney at Bay & Devereaux Streets, I guess --

Q Okay. Is he --

A -- in the Bahamas.

Q Sorry, I didn't mean to interrupt.

A No, I'm done.

Q Is he the debtors' Bahamian counsel?

A Yes.

Q And Jason Maynard, is that a lawyer at Mr. Peter Maynard's firm who also represents the Chapter 11 debtors in the Bahamas?

A I think so.

Q Okay. And this letter was received by the Bahamian Bar -- sorry, by the debtors' Bahamian lawyers from the Bahamian Bar Association on April 27, 2023?
A Correct.
Q And it concerns the application to have Mr. David William Allison KC specially admitted to appear as counsel of record for the Chapter 11 debtors in the Bahamian proceedings; right?
A Correct, as sort of an expert in sort of King's Counsel type of thing, English law.
Q Right. And this application was to have him appear as a lawyer in the Bahamian proceedings?
A I'm not familiar with what exactly the application did or didn't require.
Q Okay. So you don't know what the application filed by the debtors asked for to which this was a response?
A All I know is that we were not allowed under that application to have Mr. David William Allison appear in the Bahamas for us for what we viewed as English law requirements that we needed and that this says that -- I'll let it speak for itself, this document.
Q Okay. So you knew that the Bahamian proceedings concerned issues of English law and Mr. William Allison is a lawyer based in the United Kingdom?
A I think so, yes.

Q Okay. And the debtors wanted him to appear in some capacity in the Bahamian proceedings?
A Correct.
Q And this is the response from the Bahamian with regard to that application; right?
A I think so, yes.
Q Okay. And it says, if we look at the bottom of the first paragraph, "I advised that a usual requirement for Special Calls is canvassing all other local King's Counsel to ascertain their expertise and availability to be retained for the necessary application."
Do you see that?
A I do.
Q Do you know what a special call is?
A I don't know, but it's capitalized here.
Q Okay. Do you know what the canvassing requirements are that are referred to here?
A I don't know what the canvassing requirements are, no.
Q Do you know whether the debtors complied with the canvassing requirements specified in this letter prior to making the application?
A All I know is that the council is not minded at this juncture to approve my firm's application for a special call.
Q Well, you also know that they invited you to provide dates of availability to appear to make oral representations

as to why he should be admitted? Do you know if the debtors ever took up the Bahamian bar's invitation to have that meeting?

A I don't know what's become of this or how far we've pushed it after this.

Q So you don't know whether -- so you don't know whether the debtors complied with the legal requirements to have Mr. Allison admitted, right, you don't know whether that happened one way or the other?

A Correct.

Q And you don't know whether they took up the commission on its invitation to meet to discuss the issue; right?

A Correct.

Q And, as of today, you don't know whether Mr. Allison has or has not been admitted as of today; right?

A Correct, I don't know that.

Q And, just to be clear, if -- well, let's look at your declaration.

You say in paragraph 23 that you understood that this application to be similar to a *pro hac vice* motion in the United States. What is a *pro hac vice* motion in the United States?

A It's just a request to appear in front of a court.

Q Do you know whether in the United States, in this Court, an English lawyer could file a *pro hac vice* motion to

appear as counsel of record for the Chapter 11 debtors?
A I'm not a lawyer, no, I don't know.
Q You don't know about that one way or the other; right?
A No, I don't know that.
Q Okay. Sir, you gave some testimony concerning whether the possibility that customers may or may not have migrated from FTX Trading to FTX Digital Markets; right?
A Please ask the question again.
Q Sure. Do you recall during your direct examination speaking that one of the issues that is in dispute in this case is whether customers may or may not have migrated from FTX Trading to FTX Digital Markets?
A Correct.
Q Okay. I want to be clear, you have not, in your capacity as the financial adviser for the debtors, undertaken any effort to search the business records of the debtors for documents that would speak to whether or not that occurred; right?
A No, we have not undertaken an effort to look for documents that may or may not point to completion of a migration plan.
Q Okay.
MR. ZAKIA: Can I have one second, Your Honor?
THE COURT: Sure.
MR. ZAKIA: Thank you. I have no further

questions.

THE COURT: Thank you.

Redirect?

MR. GLUECKSTEIN: I'm sorry, Your Honor, I didn't know if there was any other questioning of Mr. Mosley, but I'm happy to redirect.

REDIRECT EXAMINATION

BY MR. GLUECKSTEIN:

Q Mr. Mosley, Mr. Zakia showed you what's marked as Joint Exhibit 54, the letter from the Joint Provisional Liquidators. Do you still have that in front of you?

A I do.

Q Have you reviewed this document in its entirety prior to your testimony today?

A Yes.

Q In your opinion as a restructuring professional, would creditors receiving this type of letter cause confusion as to with whom they should lodge a claim?

MR. ZAKIA: Objection, speculation.

THE COURT: Sustained.

MR. GLUECKSTEIN: I'm asking for his opinion.

THE COURT: Sustained.

BY MR. GLUECKSTEIN:

Q Mr. Mosley, Mr. Zakia showed you Joint Exhibit 11, which was the 2022 terms of service. Do you still have that?

A I do.
Q Mr. Zakia took you through certain schedules annexed to the 2022 terms of service where FTX Digital Markets was referenced; do you recall that?
A I do.
Q Do you have an understanding as to whether custody of cash is a specified service under the 2022 terms of service?
A I don't think it's a separate service that's governed by one of the schedules. I think that's sort of core to the customer relationship and what we -- you know, what FTX is doing with its customers. So I think it's -- it definitely does not say that FTX Digital Markets is the service provider for cash custody, if that's the question.
Q It is. And how about with respect to custody of digital assets and cryptocurrency, are you aware of anything in that document that identifies that being a specified service or being provided by FTX Digital Markets?
A It does not say it's provided by FTX Digital Markets.
(Pause)
MR. GLUECKSTEIN: No further questions, Your Honor.
THE COURT: Thank you.
Thank you, Mr. Mosley, you may step down.
MR. ZAKIA: Your Honor, I'm sorry, could we have one second before you excuse the witness?

THE COURT: I don't allow recross.

MR. ZAKIA: Okay. Thank you, Your Honor.

THE COURT: You may step down.

Let's take a short recess here. We'll come back and we'll finish up. We'll try to plow through the rest of the day. So let's take a 15-minute recess, we'll come back at 11:15.

(Recess taken at 10:59 a.m.)

(Proceedings commenced at 11:17 a.m.)

THE COURT: Mr. Shore?

MR. SHORE: Good morning, Your Honor. Chris Shore from White and Case on behalf of the JPLs. There have been a lot of papers, exhibits, and testimony filed on this motion, so it's hard to know what the Court sees right now is the key issues to be addressed, so feel free to interrupt me and focus me. I'm happy to do so.

But I want to start by highlighting three overarching points.

THE COURT: Well, I do have -- here's my thinking at this point.

MR. SHORE: Um-hum.

THE COURT: From a practical standpoint, if I allow the JPLs to go to the Bahamas and proceed there, what could possibly happen? Because regardless of what the Bahama court does, I still have to make the same determination, and

I have to do it on my own.

MR. SHORE: Um-hum.

THE COURT: And the assets that we are talking about are all under the interim jurisdiction of this Court. So regardless of what Bahamas decides -- if they decide, yeah, it all goes to digital -- it doesn't go to digital until I say it goes to digital.

MR. SHORE: Um-hum.

THE COURT: So what are we gaining from a practical standpoint by allowing a proceeding to go forward in two different courts on the same exact issue?

MR. SHORE: Okay. And one -- this is why I wanted to emphasize this point on the narrow scope of the relief and what we're actually seeking because we're not seeking to have dual proceedings. We're not seeking you to -- to cede your jurisdiction to the other court with respect to any of these issues, unless you deem it appropriate to do so.

What we are asking today, and I -- the one thing that has to get done to start that process is to file the application in the Bahamas court. That leads to another process that will require this Court signing off on it and the Bahamas court signing off on it. It's either going to come in the form of, one, a consensual protocol by affected parties to say, we agree the following issues should be decided by the Bahamian court. The Bahamian court should

tell Mr. Greaves whether the cash he has on hand, of which he -- the Bahamas court has jurisdiction; not you because it's not property of the Debtors; it's property of the Bahamian court -- can proceed in the Bahamas.

The issue of whether or not the terms of service should be voided as a fraudulent conveyance will occur in this Court. We'll work out a consensual process, and Your Honor will either agree with it or not and say, okay, we get it; this goes here, this goes here, here are the procedures. That's one way of handling it.

Another way of handling it is just to have the two courts talk to each other, and that has happened in the past. We have a basket of issues. The parties can't seem to get out of their own way to discuss whether any of this should occur anywhere else, and we're going to tell you, I, the Chapter 11 court, am going to decide all issues relating to Chapter 5; I'm going to deal with all issues relating to the terms of service as they apply to the accounts of the Debtors, et cetera. We could do it that way.

We could do a hybrid where the parties get as far as possible along the lines of a protocol that allows these two courts to exercise their jurisdiction without running afoul of each other's stay and then come to the Court with a set of procedures and say, we can't decide these four issues; the Debtors take this position; the JPLs take this position;

the UCC takes that position; and it's going to need to be sorted out.

Or we get to a set of courts digging in. You say, I am going to handle all issues with respect to all cash around the world, and the Bahamian courts stand down, and the Bahamian court would in a normal setting where we've seen this happen between courts, say, what are you talking about? I'm going to tell my Debtor what to do, and we get into a jurisdictional mess. That's a bad day for everybody.

You heard these issues that are framed by the application. Is this property of an estate, or is -- are these assets held in trust? Were the customers who would have rights under U.S. law or Bahamian law with respect to those assets customers of a U.S. debtor or foreign debtor? They have to be resolved, and both courts have jurisdiction over it.

It's been no secret that if you allow us to do that -- just file the application, get the parties to talk; if the parties can't talk, the courts will sort it out, rather than go into a jurisdictional war. It gets -- it gets worked out. Our position is going to be the Bahamian court's the best court to deal with Bahamian law, English law, Barbudan law, Antigen law because it is -- that's all under the commonwealth, and this Court is best charged with dealing with the Chapter 5 issues. Or wait, are all these void,

right? Can they be avoided as a fraud?

Things like that can be sorted out, and we have never said this Court can't decide any issues. We've been sitting by the phone waiting for the Debtors to engage and say, there is, in fact, something that can go on in the Bahamian court, whereas their position has been zero can ever happen there.

THE COURT: Well, I'm not inclined to agree with you that this Court should be restricted to deciding the Chapter 5 issues.

MR. SHORE: No -- no, I did not mean that -- I did not mean to say that. I gave that as an example of -- we -- we would certainly not argue that the Bahamian court should be the one addressing the application of Chapter 5. There are a number of issues that will have to get addressed.

THE COURT: All right. Yep.

MR. SHORE: And in fact --

THE COURT: No, but what I'm saying is --

MR. SHORE: Yep.

THE COURT: -- this Court has to decide whether or not these assets belong to this Debtor, or do they belong to the Bahamian Debtor?

MR. SHORE: Well, that issue involves a question of English law, as we've laid out in the papers, and this Court is authorized to abstain in favor of the Bahamian court

to have the Bahamian court resolve certain issues, and the Bahamian court is authorized to abstain and say Your Honor can do it. Or you're both authorized to say, we'll hold joint hearings, we'll hear all evidence together, and then we will decide amongst ourselves how the issues are going to be decided. But the fundamental starting point --

THE COURT: How does that work -- I know we did that in Nortel, and I was involved in the Nortel case, but what do we do -- I mean, a joint hearing and the Bahamian court and I disagree.

MR. SHORE: Um-hum.

THE COURT: So then what happens? Now I've got in rem jurisdiction over the assets --

MR. SHORE: Yeah.

THE COURT: -- so my decision controls.

MR. SHORE: Your decision would control with respect to the Debtor's property in the United States over which it has accounts, and your jurisdiction would not extend to what Mr. Greaves told you are the assets of DM, which are under DM's control, what are those accounts --

THE COURT: Those are limited. Very limited assets, yes.

MR. SHORE: But it's not -- it's -- it's not -- well, I'm going to get to the practical implication of this, but at the end of the day, if you're going to disagree, and

we're going to lead to a jurisdictional squabble, which we're -- I think we should all work as hard as we can to avoid. That's not a good day for anybody. Wouldn't we rather deal with it upfront than do with Judge Peck did in Lehman, which is allow people to litigate these issues and then say, well, I'm just not recognizing what the English court said. Sorry. You wasted your time doing it. That -- that seems to me to be an inefficient process.

THE COURT: Well, that's what I'm trying to avoid, as well.

MR. SHORE: Right. So -- so it seems to me that starting out at the beginning saying, of course, there's issues that need to be dealt with the Bahamian court. Mr. Greaves can make an application to say, can I use the money that's on deposit on the basis it's not a trust asset? Why can't he do that?

The Debtors are saying, absolutely not. You are restricted to the -- on restricted cash right now, and you're going to litigate with me for a year or years over the adversary proceeding with a million dollars in cash.

THE COURT: Well, if the Bahamian court has interim jurisdiction over assets, then they're in the same position with regard to those assets that I am in regard to all the other assets.

MR. SHORE: Correct. But the Debtors aren't

agreeing to that. The Debtors are saying --

THE COURT: Well, I'll talk to the Debtors about it.

MR. SHORE: -- it is a stay violation for the Bahamian court to exercise its in rem jurisdiction to decide issues, and this is what the Debtors are really concerned about. We're going to go through the terms of service with the Bahamian court. Look, what -- what's going on here? It says here, this is this; this is this. And the Bahamian court's going to render a ruling under English law. The only -- normally, that would not be a problem, but I think the Debtors are reticent of, well, I -- I've appeared in that proceeding, and somebody's going to argue that's res judicata against me when we talk about it in my own case with respect to the ownership of the funds. We can solve that in a protocol. That can all be addressed to make sure that we're not running into that problem.

But you can't say I don't want the Bahamian court to issue any ruling with respect to what it believes English law means with respect to the cash that is in the Debtor's hands because that might affect my negotiating position in this case or might affect you. Well, it's not -- you're telling me loud and clear it's not going to affect you. At the end of the day, you're going to have to come to that decision, and it may be that the English court under English

law determines that they're not trust assets, and it may be that you determine under English law with the reference to experts and listening to the experts, you determine they are trust assets, the cash the Debtors have are trust assets. You can't --

THE COURT: Well, one of the benefits is under English law is it's written in English. So I can read it for myself and understand what it says as opposed to -- I've had cases involving laws of Mexico, where there's a dispute over what the translation of that law is. But I don't have that problem here.

MR. SHORE: It may -- it may be when we negotiate a protocol that that is the result that people come to. I do think, having been through it with Bahamian counsel, there are going to be some specific issues with respect to English trust law and whether the language in the document is sufficient to, under English law, confer trust obligations. There're going to be issues with respect to novation under English law and whether English common law provides for the terms of service, as you saw in the testimony today, to be novated such that the customers who access the portal with or without the pop-up became customers according to those terms. So I --

THE COURT: Those are all things I can decide under English law with the use of expert testimony. And I

can read the -- if there's case law, I can read the case law. If there's statutes, I can read the statutes. I can understand it.

MR. SHORE: I'm not saying you can't. I'm also saying that it may be that if what ends up happening is we run a proceeding in the Bahamas, and there's an evidentiary record created and there's a read decision created by the English or the Bahamian court applying English law, you might or might not find it persuasive. Nobody is asking you today to agree to cede any of your jurisdiction or supervisory powers over anything. The only thing we are asking you today is let us invoke the jurisdiction of the Bahamian court and give us some guidance as to what you want us to do with respect to a protocol. It can't be that Mr. Greaves is -- is limited to $1 million in cash because he can't go talk to his own court about his own cash. Or he can't go out and seek to have customers file proofs of claim but based on a determination under English law from the perspective of the DM estate, these are or are not customer and creditors of your estate.

The second thing I want to highlight coming out at the beginning, is the notion that -- and I'm hearing a little -- in Your Honor's questioning here -- effectively, the Debtor's position -- and Your Honor's position is what your position is. But the Debtor's position as articulated in

their papers is that the only court that can ever touch these issues, issues of who the customers are, where they map to, and what is the obligation under the terms of service with respect to the cash on hand, can only ever be decided by this Court, and the Bahamian court should never be able to issue a decision, much less hold a hearing with respect to that issue without violating the stay.

And look, reading between the lines, 90 percent of the opposition to what we're doing here is based on a disappointment or regret of the existence of the Bahamian proceeding. And effectively ask this Court to ignore the fact that there is a proceeding with respect to a non-U.S. Debtor proceeding in a recognized foreign-made proceeding undertaken by recognized foreign representatives to determine issues.

And I think they're trying to tell you that FTX -- and this has been their campaign, I think, since the beginning of the case -- FTX trading is a nullity. It was just put there to -- to engage in further fraud.

If they really wanted to treat the proceeding as a nullity, they shouldn't have consented to jurisdiction. We have an order that nobody's seeking to vacate or reargue that says that FTX DM is a debtor in a foreign-made proceeding being supervised by foreign representatives who are authorized to come into court, like I am today.

So wishing away the proceeding isn't an option here. We have to deal with the fact that there is a proceeding pending in another court with respect to a Debtor who is not under the general supervisory jurisdiction of this court but rather is sitting in its Chapter 15 capacity.

And for all the Debtor's rhetoric about this Court has an unflagging obligation to grab jurisdiction, protect its jurisdiction, assert precedent over all other courts on all other places, that's just not the law. This is not a -- someone coming in and saying I've got a tort case pending in state court, and I want you to let me liquidate my claim there. This is three proceedings. An 11, a 15, and a Bahamian proceeding.

And there has to be a way to work out issues that can be decided in one case but necessarily might have effects or might not have effects in the other proceeding. And far from advocating the Debtor's box out at all cost, this is what the federal judiciary says about what's supposed to happen in Chapter 15. And I emphasize it because the Debtors have tried to write out entirely the notion of cooperation and the fact that we should, at all costs, be trying to avoid the loggerheads between two courts.

This is from the U.S. Courts Gov website, bankruptcy basics on Chapter 15. The purpose of Chapter 15 and the model law on which it is based is to provide

effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.

This general purpose is realized through five objectives specified in the statute, and the first one is to promote cooperation between the United States courts and parties of interest and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases.

There has to be some cooperation. And we're just not willing to accept the notion that where we should go here is what the Debtors are advocating, zero cooperation. You take jurisdiction over all issues, every -- any -- any other court that tries to exercise its jurisdiction over its own debtor takes a back seat, and if they do anything, it's a stay violation by the JPLs, anybody who argues the case, and by the court that issues the ruling in that case. That is not cooperation.

One final overarching point. There's a lot of insinuation and attack on the JPLs and how they've dealt with -- how they have dealt with what Mr. Ray has described as the dumpster fire. Unless the Court has questions, I don't intend to spend a lot of time defending the JPLs. They are not, as the papers insinuate, meddling kids seeking to interfere with some master plan.

As you saw with Mr. Greaves, they are experienced professionals trying to fulfill their fiduciary duties under difficult circumstances like the absence of definitive records and answers with clear instructions, and they're proceeding as recognized foreign representatives and recognized foreign-made proceeding.

Two, I'm not going to defend the fees that were spent anymore than ask the Debtors to defend their $225 million to date. This is an expensive process due to no fault of Mr. Ray or the JPLs. I'm not asking you to decide nor do you need to decide on this motion who's breaching the cooperation agreement, if anybody. That's an issue for another day. For today, the evidentiary record is clear and uncontested that, one, the JPLs repeatedly tried to engage the Debtors in good faith to discuss a protocol. And two, they gave the Debtors advanced notice of the filing, where they threatened a stay violation and then used that breathing space to file their own adversary proceeding.

The notion that the -- we should proceed with this proceeding because it's before you now is an issue that's going to have to be decides, among other things, as we pointed out in our motion to dismiss. It's a violation of the Chapter 15 stay on their part to -- to move forward with that adversary proceeding because that one is clearly seeking to avoid the digital's interest in assets in the United

States, the Moonstone Silver Date accounts.

So the -- the basis for saying we're not going to lift the stay, and we're going to proceed here because we have a first filed proceeding that has teed up the issue is one in dispute.

Finally, with respect to the Debtors' unclean hands argument, given Mr. Mosley's testimony on cross, it's hard to see how any actions by the JPLs to set up a claims portal or by the Bahamian court to ask that they re-file a pro hoc was -- was anything wrong, much less rose to the extent that -- that the JPLs have somehow forfeited their right to proceed on the lift stay motion.

On the contrary, I think the record is clear that the JPLs have assiduously complied with the stay, and I think it's clear that the Debtors are using it offensively here. I -- I don't see any explanation for the questions on how much -- the cash the JPLs have other than a -- a pointing out that the Debtors can use the stay here to strangle the JPLs' case. I mean, it's clear. I mean, I think the -- the point is, is that, just to be clear, we hold the -- the automatic stay. If the judge enforces it, you're not going to be able to even fight.

So onto the argument. In the papers, we defended our starting position that the stay does not apply to the filing of the application -- just the filing of the

application, the indication of the Court's jurisdiction without deciding what issues are going to be decided there or this Court, and what are the procedures on which they're going to be decided?

THE COURT: Well, what control do the JPLs have once the application is filed, and the Bahamian court says, well, this is what you've got to do? I want it -- I want to decide. Bahamian judge says, I want to decide whether or not these assets that are located in the United States belong to the Bahamian entity?

MR. SHORE: I -- I have not -- my motion has not sought leave for the Bahamian court to issue --

THE COURT: Well, I'm asking you what the Bahamian court could do on its own.

MR. SHORE: Well, the Bahamian court can do on its own what Your Honor can do on your own without calling up the Bahamian court with respect to the adversary proceeding. You don't have to call them up and say how am I going to decide this issue.

But what I'm advocating here is there needs to be a process set up. And if that means we have to go to the Bahamian court and say, we're filing the application, but for the next two weeks, we're going to try to -- or one week, or four days, going to try to hammer out a means of making sure that the courts aren't leading to conflicting results, and if

not, you're going to have to pick up the phone, and -- and talk to Chief Justice Winder (phonetic) and work it out, or -- otherwise we are going down this process with conflicting results.

And the Debtors, to be clear, the Debtors don't get this on prejudice. Debtors always have to go to the Bahamas court. There's no question. Even if they won the case, they convince Your Honor, based on evidence from competent witnesses that all of the customers stayed with digital. That -- that FTX DM was set up as a fraud, as a nullity, and everything about it should be voided. There's still property in the Bahamas in the form of the real property and the cash and crypto. Including the crypto being held by the Bahamian Securities Commission. They still have to go get that.

Setting up a process in which one court says I don't care what you think, I'm going to decide this issue, isn't going to foster comity on the other side to say, okay, well, I'll not return these assets. I don't -- so they're going to have to go there anyway. We should just get out in front of it and come up with a means of solving your problem. If we can't solve the problem, you're going to solve it because both courts have jurisdiction over their debtors and have to decide issues with respect to the terms of service, and the nature and extent of the interests and the cash. It

has to happen.

So -- but I -- leave aside that this stay doesn't apply. We're here. We did review the evidentiary record. Let me argue the -- why the stay should be lifted again just to allow the application to be filed and work out a cooperation agreement either consensually or nonconsensually with the courts.

There are three elements: prejudice to the JPLs, prejudice to the Debtors, and a determination that the dispute is not frivolous or useless. I'll take those in reverse order on the probability of prevailing on the merits.

I know the Debtors want to jump down the road on the merits of the underlying dispute, and Your Honor has heard something on the merits of the underlying dispute. Actually, that the issue is will it advance the process to allow the JPLs to invoke the jurisdiction of their courts, subject -- subject to the determination.

Nothing's going to happen in that proceeding that's going to affect the US Debtors without further order of this court. Just sets up the process. I think the Debtors should be directed, because they have an obligation both under the code and under the cooperation agreement, to negotiate that in good faith. I think they do have to show up to a meeting and say, okay, I'll consider this; I'll consider that. Not just fiat it in a different use of the

word fiat.

But that's -- that's where we need to get. And we have a -- Mr. Green's made it clear. He can file an application, Bahamas court can take the application, and then the two courts can start to communicate. Otherwise you're picking up the phone, talking to Chief Justice Winder, and he's saying I don't have anything in front of me. Same thing you would respond if the Debtors hadn't filed the adversary proceeding. We've got to tee it up in both courts.

But the record, with respect to the underlying merits, if really the issue to be addressed is, is -- is this a live dispute or is this just a waste of time. The record is clear on three points. One, this is a live dispute that's been around since Day 1. And is now framed by the Debtors in the adversary proceeding as a legit case or controversy.

In other words, they think the dispute is live enough over whose customers are whose and what are the interests in the cash being held by the respective Debtors is live enough to bring a declaratory judgment action before you.

Two, the 2022 terms of service exist just as they did in prior iterations as Mr. Mosley made clear. And they made clear. I don't need to walk you through the documents. They made clear that FTX Digital was in privity of contract with customers who used services. And the important

paragraph says where you read FTX Digital as applying to or you were talking about specific services with the service provider, cross out FTX trading and put in FTX Digital. That is a live dispute.

And then three, you heard from both Mr. Mosley and Mr. Greaves that the money flowed consistent with those terms. Mr. Greaves described it more fully in Paragraph 17 of the declaration how $13.4 billion of cash flowed through accounts in the name of FTX Digital. In other words, customers' money was held by FTX Digital in accounts owned by FTX Digital -- again, whether or not that was set up as a fraud and can all be avoided is an issue that's way down the line, and would have to be addressed in the context of -- with respect to the Debtor's cause of action under Chapter 5 to void all these things. That will proceed in the United States. Okay. I'm not going to argue otherwise. I don't think the Bahamian court has the ability to apply Chapter 5 law and avoid the transaction. Okay?

But it has to -- as I keep saying, it has to be worked out. But this -- this is not what we're doing. The Court does not need to decide to determine -- to decide whether to lift the stay whether or not customers did or did not migrate. It's a question of whether the position that's been taken is frivolous or useless.

I want to point out one thing on the voiding of

all of this and the inconsistency the Debtors are taking. One of the provisions in the 2022 terms of service is 8.2.6. That's the provision that for the first time created the trust relationship between the party named FTX Digital -- or it's FTX trading, and the customers. When -- when the DOJ talks about the fraud, or -- or Mr. Ray (phonetic) testifies about the fraud -- he stole money, customer money. That's the 2022 terms of service.

So voiding that contract is something that a lot of people are going to have an interest in addressing. So we're going to have to deal with that in the context of the protocol.

Again, all this leads to, at the end of the day, either a consensual sorting of issues or a nonconsensual one imposed by the two courts that we're just trying to set up so that we don't litigate in multiple proceedings and then have the Bahamas court say, too bad, I'm not -- I'm not enforcing that in the Bahamas, or this court saying, too bad, I'm not enforcing this in the United States.

That seems to me to be the waste of time that can be solved if experienced professionals sit down with the model rules in this court and the -- and the precedents out there and say these are the issues that need to be done. Here are the participants. The committee should be entitled to intervene in the Bahamas proceeding. Okay. The Debtors

shall be able to make a new application for pro hoc vice for their lawyer to appear. Okay.

This has to be done in the Bahamas on the following schedule. This has to be done in the United States on the following schedule. Present it to you. Present it to Chief Justice Winder. Are you both okay with this?

If we're not -- right? If you, at the end of the day, say, under no circumstances am I letting the Bahamas -- am I ever abstaining to the Bahamas on this issue, then at least we know now, as opposed to running down the road and litigating this issue only to have the Bahamas court say, I don't care what the US court says, or you say, I don't care what the Bahamas court says.

The prejudice to the -- the Debtors. I want to focus on the concept of legally cognizable prejudice. The Debtors may be insecure about having this court coordinate with the Bahamas court, but I don't understand the legally cognizable prejudice of having the two courts talk to each other. It's not -- Your Honor is not being asked to give up any jurisdiction, any supervisory power. You can have a conversation and say we've got to get to the bottom of this terms of service, who's whose customer, who's -- how are these funds being held. How are my funds -- my Debtor's funds being held; how are your Debtor's funds being held? We've got to get to the bottom of it.

We can do it as a joint proceeding; we can do it not as a joint proceeding. You decide it all; the Bahamas -- the Bahamian court may say, you know what? I don't want to deal with any of these issues. You may say there's no chance I'm going to be determining whether or not Mr. Greaves under Bahamian law can spend money that is in the accounts.

I think there's going to be things where everybody is going to easily agree, and it may get difficult in the middle, but because it's difficult doesn't mean we should push it down the road and deal with it later, particularly in a case where costs are big.

So the -- the legally cognizable prejudice it -- it just isn't there. All -- all of this about how the proceedings might play out, we can't appear in the Bahamas, the -- the committee can't have a creditor representative, all that should be worked out. And can be worked out in the context of a cross border protocol. No -- you're not being asked to decide those issues today. And with it -- with respect to the Debtors' notion wealth, the Bahamas is obviously, because the Bahamas doesn't have nuclear weapons, they're not entitled to the same deference we would give to France.

That's not -- first of all, that's just not the case. Chapter 15 applies to any Debtor. But more importantly, this Court has already recognized on a

consensual order the Bahamas proceeding as the foreign-made proceeding and the JPLs as authorized representatives in the United States. The issue of whether -- whether due process can be fulfilled there, or expenses can be controlled, or whether or not the -- anything can go on in the Bahamas at all is an answer -- is a question that's already been answered in a recognition order.

Finally, on prejudice to the JPLs; what happens if Mr. Greaves can't file the application? He can't invoke the jurisdiction of his court to get an answer. I've got cash sitting here, can I spend it? Or I've got an obligation -- fiduciary obligation to determine who my customers are, track them down, and provide notice of my proceeding. What happens if he can't do that?

The testimony, I think is clear, from today and in his declaration. One, the JPLs are appointed by the Bahamas court with specific fiduciary and other duties, and specific powers. They are a creature of the court. Two, one duty is to seek directions where the estate needs resolution of legal issues affecting the assets or liabilities. Got an obligation to go to the court and seek instructions.

Three, there are issues facing the digital estate with respect to what is its property, what of that property is held in trust, and who are the customers who are entitled to share in the assets, either specifically their assets held

in trust or nonspecifically as a general creditor? And they can't, as the -- the questioning made clear, just ignore their duties. They can't close the case. I -- I get it.

The Debtors -- we -- we all woke up tomorrow, and the Debtors were faced with a situation, the SCB never acted. It never exercised its police powers to close down that business and start a provisional liquidation. And Mr. Ray had come in and had filed that entity here? Okay. That -- that -- I guess that might be more efficient. It might not be more efficient. I don't know. But we can't wish it away.

They have specific obligations to go to their court, and the Debtors are saying they can't. The Debtors are putting them in a fiduciary trap and asking Your Honor to order that trap where they have obligations to fulfill, and they can't get comfort from their court that listening to the United States or listening to Mr. Dietderich is a fulfillment of their fiduciary duty. They can't just say, you know what? Let's just re-migrate all the customers back. They can't say, let's just send all our cash over. They can't say, let's just release all of our claims to -- for the return of the billions of dollars that flowed out of the digital accounts to the US accounts. They can't.

Practically speaking, in a proceeding that we can't wish away, there are processes that need to be filed, and I'll say it one last time. This Court recognized that

proceeding as the foreign main proceeding and legitimized the Bahamian court and the proceeding as a proper use of Chapter 15.

So I -- I'm going to say this one last time, too. We are not, and have never asked the court, nor am I advocating now -- we didn't write it in the papers, we're not asking it -- for it in the order granting the stay -- asked to do anything other than lift the stay to allow the filing of the application subject to the term that nothing's happening with respect to the Debtor's property or the Debtor's rights without further order of this court. And quite frankly, I do think we need an order directing the Parties to work in good faith to take that first step.

No one's asking you to walk the whole staircase, and -- and move down this process. But I think it is a valid use and probably an important use of the US Debtor's assets right now, and the JPL's assets -- this isn't free -- to find out at the beginning, can we just avoid the position we -- nobody wants to put a court in?

We don't want to put you in the position, we don't want to put the Bahamian court in the position of saying, you know what? I'm not buying into this. I am not ever going to enforce an order of the Bahamian court or the Bahamian court saying I'm never going to enforce an order of the United States court that says that FTX DM was void from the start.

So we got to make -- got to take the step. Parties should be asked to, on a near term basis, negotiate in good faith to get to that protocol, and if we can't decide it, to come back to Your Honor on some other basis and say, this is what we think the protocol should be.

And then we can address the issues of, well, that's not really right. I -- you're asking Judge Dorsey to give up his jurisdiction over an issue relating to the 2022 service -- terms of service, Your Honor, we don't think you should do it. And you may say, I'm not approving that part of the protocol. I think where we get is we're going to have to have joint hearings on the terms of service and the migration.

THE COURT: Thank you.

MR. SABIN: Your Honor, Jeff Sabin from Venable, who is representing the ad hoc group, who issued a statement in partial support. I want to answer your two questions that are vexing you.

First, if it were to be quickly because our clients, like others here, are international customers who are worried about one thing, maximizing their recovery in as short a period of time as possible, if there were to be even perhaps before you were to make a decision here, a call with two judges, okay, who certainly everyone in this room respects for what they do, to talk to each other and say, you

know what, yes, we can have joint hearings. We can focus the issues. We can even decide amongst ourselves right now that, if we were to disagree, maybe we'll have a discussion on appointing a third who would be, effectively, the final arbiter of those issues.

Anything that we can do, pragmatically -- and I think you have the power to do this -- that's what we are otherwise pushing for, and we're pushing for it for all the reasons that all parties seem to say, which is we need to get to an understanding of the facts relevant to these key issues of law to move this case forward.

Thank you, Your Honor.

THE COURT: Thank you.

Does anyone else wish to speak in support of the motion?

MR. DIETDERICH: I can almost say good afternoon, Your Honor. Andy Dietderich of Sullivan & Cromwell for the debtors.

Your Honor, we're six months into these cases and the JPLs still do not accept the premise that the cases are really in Delaware. This is not a motion for court-to-court communication, it's not a motion for protocol, it's not a motion to ask you to call the Bahamas judge, it's a motion to transfer venue on the central issues of this case to another court. It's not a motion to dismiss the cases, but it is, if

granted, a motion to gut them, and we know this because that's what they wrote down.

The motion seeks an order from Your Honor granting permission to file the application. The application seeks a declaration from another court. The declaration is not advisory, it is not guidance; it is a binding declaration.

The other court is asked to decide if FTX Digital Markets owns all rights and obligations related to user accounts at ftx.com. The other court would decide if FTX Digital Markets owns all digital assets associated with ftx.com. The other court would decide the nature of customer rights against ftx.com.

The other court would decide if the JPLs are a trustee for customers, empowered to collect $11 billion of missing customer entitlements. The other court would decide the scope of the powers of the JPL as trustee. The other court would decide how much property is in the trust that it's entrusted the JPLs with in response to the application. The other court would decide if the tracing rules by which the trustee would claw back assets from all of the debtors and from all of the non-debtors, and from any person to which the debtors have made any transfer.

This is the worst kind of slippery slope. An indication of its scope is the short statement filed by the JPLs themselves relating to the Voyager settlement.

So this was done March 7th, after our cooperation agreement. Voyager received a preferential payment, in our view, from Alameda. From Alameda, Your Honor, not from FTX Trading. We agreed a procedural stipulation and asked the Court and Judge Wiles to so order. The JPLs intervened with a short statement. It said that the JPLs may have an interest in the proceeds received by Voyager, and the JPLs reserved their right to claw that back into FTX DM.

I'd like to read what that statement says, if I may. This is on the docket, Docket 819. "The joint provisional liquidators expressly reserve the right to file and prosecute proofs of claim against the Voyager debtors, including claims related to payments made by any of the U.S. debtors to the Voyager debtors during the relevant preference periods with funds originating from the Digital estate."

And keep in mind they think, in the earlier paragraphs to this pleading, that the money came from Digital Markets and went to Alameda, so therefore they can chase the preference.

"The motion should not impact the rights of the joint provisional liquidators to seek to intervene in any mediation or litigation concerning the preference claims. In short, if there is to be global peace with the Voyager debtors, that peace cannot likely be reached solely in the United States."

What the JPLs are asking for is effectively, operationally, concurrent jurisdiction over all of the assets of our estate. Luckily, they can't have it, and they can't have it because of the global automatic stay.

The global automatic stay is why we filed in Delaware in the first place. This is one of the most complex insolvencies ever filed, it may be the most complex insolvency ever filed, but we have had one saving grave: we know who calls balls and strikes, we have centralized jurisdiction. If you take centralized jurisdiction away from us, in light of the complexity of what we face as a debtors' team, we will not be here for years, we may be here for decades.

So there are two questions before the Court: Does the stay apply? And, if the stay applies, has the movant shown cause to lift the stay to file the application?

Now, Your Honor, there can be no serious question, if you actually read the application, that the stay applies to it. The application seeks determination of ownership of property of the estate. If this were an action initiated in a Bahamas civil court by a creditor alleging the creditor owned all of the property of the debtor's estate, the action would be stayed, and there's no exception to the scope of the stay for a non-U.S. insolvency proceeding.

So the only real question before the Court is

whether the movant has carried its burden of showing cause to lift the stay and the heart of that test, as Your Honor knows, is evidence presented as to the balance of harms. We would submit, Your Honor, that there is in the record obvious evidence of substantial harm to the debtors, their estates, and their creditors if the core issues of this case are moved to the Bahamas.

Mr. Mosley testified about expense that cannot be dismissed. There would be new counsel, travel, additional hearings, not for some discrete contractual issue, but for all of the issues that I mentioned would be raised by the application, including the tracing of the assets and, if you read the filing they made in March, every single cause of action that we would bring on an outbound basis. Now, he may say today Section 5 is reserved for Your Honor, but that has not been their position to date.

And this is redundant. This expense is dead weight loss because the proceedings would be redundant. We would be back here litigating in front of Your Honor the same issues anyway.

Now, there was reference to the Chapter 15 recognition order and I think this is very important. We consented to Chapter 15 recognition after initially contesting it and we did so because of one provision that we wrote in the recognition order. And this is in the

recognition order in the -- of course on the docket of the other case at 129. And it says in paragraph 9, "Nothing in this order, or any relief granted hereby, requires the court in the Chapter 11 cases to defer to any decision in the Bahamian liquidation proceeding with respect to or alters the court's *de novo* standard of review on any matter raised by the Chapter 11 debtors before the court in the Chapter 11 cases with respect to property of the Chapter 11 debtors, including, without limitation, the scope of property of the estate or the application of the automatic stay."

We bargained for that because we expected that this would happen. We recognized the JPLs because they need representation in the United States to vindicate their rights, but we did not by doing so seed the primacy of the Chapter 11 to determine what is property of this estate and all of the rights that come with that. If there is something that is not property of our estate over which Digital Markets has custody, then there is a purpose for the Chapter 15 and we fully support that purpose. We also fully support the Chapter 15 to make sure that we know who can speak for the JPLs in federal court, but that's it.

So it is redundant because I can virtually assure you that if we were simply to allow litigation to proceed in the Bahamas and a result of that litigation were to come back here, I think it highly unlikely the debtors would support

that judgment. We might, we don't know what it says, but I think it's highly unlikely. And not only that, but not only we would have to support it, but every other stakeholder would have to support it because that language benefits not only us, it benefits all of our stakeholders as well. So the cost is incremental cost, there's no cost savings.

And, as I said, this is not just about us, this is about every party in the case that would need to go through the process that we ourselves have not yet completed to get a KC into the Bahamas court to represent us, everyone would have to go through that.

And, Your Honor, unlike a lot of the state cases, these aren't sunk costs. The Bahamian proceeding on these issues is not even at the starting line. We have no investment in the process there. Mr. Greaves testified he's not aware of a single creditor appearing in the Bahamian joint liquidation proceeding. Contrast that to what we've already accomplished in this case to date.

But -- but -- something not in the evidence is equally prejudicial and I want to speak to it as a lawyer because venue here is not simply about who decides, but it is about the law they use to decide the question. And we've been treating the law like it's a fixed thing, but the important principles of law are not fixed at all.

What is at issue? At issue is whether or not they

need to come to this Court and ask to establish, with the burden of proof on them under Section 362, that they have an interest in property of the estate. Congress gave the debtor the benefit of the burden of proof on that question and the first thing that might happen if that question leaves this Court is we lose the burden of proof, but that pales in comparison to the second issue, the question of constructive trust.

We've talked a lot about customer property interests. We've been working through the question of whether customers have a property interest in digital assets or fiat currency for months. It is a very, very advanced discussion with many different stakeholders. There's been two separate adversary proceedings filed in this court on that question and they're suspended to permit these discussions to continue.

Now, the question to customer property rights has two elements. The first is contractual, is there a user agreement or another contract that creates a trust or a bailment under contractual law? We have user agreements under U.S. law, Australian law, Cypriot law, Japanese law, Swiss law, and English law. We've looked at the question each. For ftx.com, the question is governed by English law.

And the question, the English law question is whether that contract creates an express trust. We believe

the question is straightforward and the answer, after our work, is no, but the matter is not before the Court. If it's ever litigated, and if the question is even clear enough to be litigated, we believe Your Honor will agree when you hear the evidence, and we clearly believe you're competent to do so, but that's not the interesting question.

The interesting question under virtually all of these arrangements is constructive trust and, as a Federal Court sitting in Delaware, Your Honor should apply Delaware conflict-of-law principles. Under Delaware law, constructive trust is a remedial doctrine and the law of the forum applies. This means that the substantive law of constructive trust to be applied to all of our creditors who are before you will be Delaware law for all customers and all creditors alleging a constructive trust or a similar equitable property interest.

The ad hoc group of customers, I think they're represented here today, pled it this way in the papers before the Court and we agree, there's an English law express trust question for ftx.com and there's a Delaware constructive trust question.

Now, the essence of constructive trust, of course, is unjust enrichment, and we're not talking about unjust enrichment of Sam Bankman-Fried, who will not see a penny from these cases. What we're talking about is potentially

unjust enrichment of one customer at the expense of another customer, or customers as a group at the expense of other creditors, or creditors as a group at the expense of other customers. And we are going to face these issues from, potentially, millions of people, or at least the representatives of millions of people, and it is essential to be fair to all creditors alleging a constructive trust that one set of rules apply and that everybody is treated fairly and equally. This is lost if we take one particular allegation of a constructive property interest and send it to the Bahamas because we lose the burden of proof selectively, which is supposed to benefit all of our creditors, and all of a sudden we have a constructive trust being alleged under law of a different forum than Your Honor's.

Now, this is important. If you look at docket -- Joint Exhibit 7, this is also on the docket at 1193, this is the declaration of Metta MacMillan-Hughes, which was admitted into evidence by the JPLs without objection from us, and I just want to point to one quick provision, which is in paragraph 6. And in paragraph 6 she says, "In addition, certain regulatory and insolvency issues are governed by Bahamian law," blah, blah, blah, blah, blah, but then she says "trust issues are also likely to be governed by Bahamian, English, or Antiguan law."

I think that's probably true. If the case goes --

if venue goes to the Bahamas, those laws will govern trust, constructive as well; if they stay here, Delaware law will govern at least constructive trust.

And if that's not enough prejudice, Your Honor, I want to talk about the plan process, and here I have one single slide, if we can put that up.

The automatic stay exists for a purpose and the purpose is to allow us to prosecute a plan of reorganization. We have been called ambitious for this timeline, but we intend to try our best to deliver on it. This is the work ahead and we are well on our way.

On the left-hand side is where we generally are today. Our general bar date is June 30th. We've set the general bar date of June 30th because we have some visibility into customer claims and less visibility into non-customer entitlement claims, that bar date will give us that visibility.

We have undertaken publicly to have a draft plan of reorganization -- not the final, but a draft plan of reorganization filed publicly in July. We're in discussions, consensual plan discussions already with many stakeholders with respect to that plan of reorganization, including the committee.

We have a customer bar date, but importantly, near the end of this year we anticipate having an amended plan and

disclosure statement that reflects the benefit of these consensual plan discussions, resolve plan disputes, and confirm a plan in the second quarter of 2024.

THE COURT: Mr. Shore?

MR. SHORE: Your Honor, I have no objection to Counsel talking to you about a plan, but it's not part of the confirmation record -- I'm sorry, the lift-stay motion record. Mr. Mosley was here and could have testified to any of this, they chose not to do it that way, so I don't think it would -- he can, as I said, talk as he wants, but it shouldn't be part of the evidentiary record and we object to this.

THE COURT: Understood.

MR. SHORE: Okay.

THE COURT: Go ahead.

MR. DIETDERICH: The -- we also, Your Honor, have identified -- and this is important -- we have said in our pleadings that we do not require any relief from the Bahamas for the confirmation of our plan, and that is true, we do not need to go to the Bahamas. We would love to have a solution to the question of the property company in the Bahamas, which is a debtor, by the way. The only thing necessary for us to do to sell all of our real estate in the Bahamas and pay 100 percent of the proceeds to customers and creditors is for the automatic stay to be respected with respect to that entity,

that's it.

Now, whether or not the automatic stay will be respected by the one creditor of the property company in the Bahamas, which is Digital Markets, I don't know, but the only thing that's necessary for us to sell the approximately $250 million of real estate we have in the Bahamas is for the stay to be respected so that we can do so because that company is a debtor. And the JPLs have a claim against the debtor, but it is an unsecured claim.

The only other property in the Bahamas of which we're aware is a very small amount of operating cash and a little bit of customer FBO cash. Would we like to include that and distribute that to customers? Absolutely, but our business judgment is that we would be nuts to link our estate and all of our value to the estate to a process that requires concurrent jurisdiction with the Bahamas simply because we're worried about a relatively modest amount of customer FBO cash.

We do need to decide if customers have a property interest, but we need Your Honor to decide that, we don't need the Bahamas court to decide it, and there's nothing in this confirmation plan that involves it.

The other important issue we have with Digital Markets is of course who owns the IP and the customer relationships and the goodwill of the business in case we'd

like to sell or recapitalize FTX 2.0 in connection with our plan of reorganization. Is that essential for confirmation? Probably not. Would we like to do it? Absolutely. Do we require any relief from the Bahamas to sell it free and clear? Under no circumstances.

So our answer to this conundrum, we would have a different approach, Your Honor, if we had $5 billion here and $5 billion there, or a different approach if we had not already concluded that we have all of the assets in REM and owe those assets to all of the customers. Our job is to get assets to customers and creditors as quickly and expeditiously as possible and we cannot, in our business judgment, decide the right way to do that is to invoke concurrent jurisdiction for no practical business purpose.

So, again, we would love to have a deal with Digital Markets with respect to what happens to their FBO creditors committee cash, which I understand to be less than a hundred million dollars, and we'd love to have a consensual resolution to the property in the Bahamas, but we do not need it to confirmation and we're not going to put ourselves in a position where we need it for confirmation.

Lastly, Your Honor, in terms of prejudice, this issue is not confined to Digital Markets in the Bahamas. Digital Markets is one of approximately 130 subsidiaries -- about a hundred debtors, about 130 subsidiaries. If the stay

is lifted for one insolvency case, we can expect petitions to lift it for others. The Court could decide each motion when it's filed on its merits, but the precedent has been set, and in this case a precedent of global centralization is very, very important to the plan process that we want to conduct.

Okay, that's us. On the other side of the scales, prejudice to the JPLs. Well, there's virtually no evidence of this in the record. And Mr. Shore talked about legally cognizable prejudice; I want to focus on exactly that.

In some of the papers, there was a reference that the Bahamas proceeding might be quicker, so it could be cheaper. Well, again, I argue that it's entirely redundant, so any cost is incremental and any cost is a dead weight loss. But, if it's quicker, one has to ask ourselves, all right, well, if it's quicker, then that has a relationship to whether or not that proceeding will then be respected by Your Honor, ourselves, and the other stakeholders in this process. And I would submit that the alleged defects of slowness in a Federal Court process that gives notice and opportunity to be heard to everybody, as it must, is not legally cognizable harm in a Federal Court.

Familiarity with the issues has been mentioned, but, as I said, we see the English law issue as a very discrete issue. Your Honor has already done a cryptocurrency case, unlike many judges around the world. Your Honor is

familiar with the basic principles thanks to that case and this case and everything else. We would argue Your Honor is equally capable, if not more capable than the Bahamian judge to deciding an English law question. But, regardless, speculation about the relative familiarity sets of two judges is not cognizable prejudice that shows cause to lift the stay.

Mr. Greaves acknowledged today, acknowledged on the stand today, this Court can hear the issues that concern them, the Court is competent to hear the issues that concern them, and the issues raised in the application, what do they own and who are their creditors, are the same issues as what do we own and what are our creditors, and those are the same issues set forth in the adversary proceeding. So we are talking about a redundant proceeding.

The harm in the record -- and there was evidence of this harm -- the harm in the record is harm to the JPLs as fiduciary; they won't be able to comply with their fiduciary duties.

Now, I don't know if that's true or not. I would think that the JPLs could ask their court to give them comfort that they're not violating their fiduciary duties in a manner that creates some kind of liability regardless of what Your Honor decides. But, in any event, the JPLs are not here in a personal capacity. The JPLs are not here to say

there's harm to me. The JPLs are agents, not principals. They represent an estate, they represent creditors. For harm to be cognizable it can't be harm to the agent, it has to be harm to the principal.

There is nothing in the record, no evidence whatsoever of any harm to Digital Markets for litigating the question in front of you, only to the JPLs. There's no record of harm to any creditor of litigating the matter in front of you, because there can't be because, again, we have the assets and we can give them to all of the creditors immediately without bypassing through the Bahamas. Zero evidence. And I would submit that the fiduciary duties of the JPL may require them to come ask your Court to transfer venue to their court, but the fiduciary duties of the JPL do not require you to grant the relief.

Finally -- and this is I think important enough, even if it's not express, but there's several references to this throughout the JPL's papers, strongly implied. They contain many references to actions of the current Bahamian government, the Bahamian regulators, the DARE Act. And there is another interest here, the Bahamian government may have an interest in the outcome of these cases, an interest in having matters heard in the Bahamas. You know, there was mention of comity, interest in the regulatory structure, attracting new crypto investments, maybe even in being the host to FTX 2.0.

I don't know which way that cuts, Your Honor, but I do know, luckily, you don't need to consider those issues because they're not part of the standard for stay relief.

The Bahamian government is not here in front of the Court today. The Bahamian judiciary as judiciary is not in front of the Court today, the JPLs are and, as they have reminded us many times, the JPLs do not speak for the Bahamian government.

So the case law, very, very briefly. Putting it together, it is really a three-prong test, as Mr. Shore mentions, but with one important caveat. And if you look at a case, for example, DBSI, Judge Walsh phrased this very nicely, 407 B.R. 159 at 166, three prongs: Is there great prejudice to the estate if the litigation is allowed to continue?

Now, that's an interesting phrase itself because most of these cases are about something that's already been commenced. This, again, is here and not there, but I think we have put in sufficient evidence that there is indeed great harm if this case loses the benefit of the global automatic stay.

So the next prong is, does the movant -- is the hardship to the movant, sorry, consider -- does the hardship considerably outweigh the hardship to the debtors? Considerably outweigh. Is there considerably more hardship

to the JPLs in having to ask this Court to decide that they own property of our estate than being able to get selective treatment and go to the Bahamas and do the same thing? And I think, clearly, the evidence today has shown that there is not cause to lift the stay on that basis.

What's the probability of success on the merits? Well, for today, nobody knows. Now, we clearly believe that this argument is a difficult one for the JPLs to make because, as Mr. Mosley testified, there may be specified services provided by DM matching trades on an exchange, but custody of crypto, custody of cash were not specified services.

And so as Mr. Mosley said, and that reflects many conversations with that on the debtors' side, there's no way we could tell any customer, I'm sorry, all this value we have collected, not for you; you can go to the Bahamas. We're not in a position to do that for the simple fact that we were the custodian of all of the crypto and all of the digital assets. Our name is at the top of the agreement. Our name is at the top of the website. We own the website. We own the intellectual property and we are completely implicated by this. And so we decided as a debtor, that there's -- you know, we would love to get rid of some claims by sending them somewhere else, but it's just not fair to do.

But there's a fourth kind of quasi-problem and

Walsh mentions that in his opinion, and I think it's important; in fact, Mr. Shore mentioned it in an oblique way, as well, which is Walsh writes, Judge Walsh writes, "Courts also place emphasis on whether lifting the automatic stay will impede the orderly administration of the case." And here, it clearly will.

Your Honor, unless you have questions, Your Honor, I will just close by reiterating that we are confident as debtors that we can confirm a plan of reorganization for this case in the second quarter of 2024. No promise and no guarantees, but that is a path forward that we believe is viable, but only with the full protection of the global automatic stay. The Movants have not carried their burden to show cause for relief from the stay at this time and, Your Honor, respectfully, the motion should be denied.

THE COURT: One question to address Mr. Shore's argument about the fact that if we proceed here, the JPLs are going to be put at a disadvantage because they don't have access to cash to be able to pay their lawyers and the JPLs to represent their interests here.

How do I address that issue?

MR. DIETDERICH: Well, I think you have to ask the question. We have many people who would like to be paid their fees in this case to represent interests of various clients. I think the question would be, does a digital

markets estate, *in rem*, have access to properties sufficient to pay or, as they've said, I think the first implication they say if the stay were lifted kind of applies if it's not lifted, as well: Can they get litigation funding? And can they give, what we would call in the United States, a "DIP"?

I don't have any other solutions for that, because any other dollar that we pay them comes out of the creditors' pocket.

THE COURT: Well, he says you're objecting to them even being able to go to the Bahamian Court to ask for that relief, to ask for a DIP, to ask for some kind of access to the cash. That they do have *in rem* in the Bahamas.

MR. DIETDERICH: Well, Your Honor, if this were a completely different application, right, if the request were not to determine what's property of the estate, but to identify something that we agree is their property and then we're going to ask the Court to access it, then that could -- we would obviously have no concern with that.

The problem is the only assets to which they pointed, the only assets -- and I -- (indiscernible) if they had something else -- they had operating cash, but it's been spent. The only other assets we're familiar that they have is the unsecured claim against the property company, which is the debtor, is the little bit of operating cash that they have and a little bit of crypto, and customer FBO cash.

And so if the request is, let us go to our Bahamian Court and ask to use customer FBO cash to pay the expenses of the JPL and they'd like to go to their court to ask that question, that does, in fairness, put us in a difficult spot, because those customers are our customers, and I may be an account in their name, but if it was received by them as, effectively, an agent on some combination of our behalf or the customer's behalf and having them spend that money on their own fees is, you know, as I said, will come directly dollar-for-dollar out of customer recoveries.

So, we're open-minded, and believe me, we have spent a lot of time negotiating for the JPLs. We don't mean to give them the stiff-arm. And we recognize we have the -- we do have some Bahamian nexus to this case in terms of the FBO cash and the property company, and we're open-minded.

One of the things we have said to them, for example, is that we've had an arrangement where we could jointly monetize the property, recognizing that it was in the Bahamas, even though it's a debtor. We have yet been able to agree with them on a process that we believe passes Chapter 11 muster for making sure the property could be dispose of in a fair and transparent way to satisfy 363.

As soon as we're able to do that, we have told the JPLs that they can pay their expenses of monetizing the property out of the proceeds of the sale of the property, for

example. And there may be other solutions for other property in the Bahamas and we're always happy to talk to them about that.

But this application, the application before the Court today is not that question; it's something entirely different.

THE COURT: Okay. Thank you.

MR. PASQUALE: Good afternoon, Your Honor. Ken Pasquale from Paul Hastings for the Committee. I'm going to be very brief. Mr. Dietderich really hit many, many of the points that I was planning to comment on.

But let me start with the last, which was Your Honor's question, specifically, about the loan, but more broadly, about the Bahamian application, and I agree with what Mr. Dietderich just said. The JPLs can do what they need to do in the Bahamas, subject to the stay. That doesn't mean everything. They can take the assets they have, they can try to administer they're estate with those assets.

But when they ask, as they do in this motion, to raise and resolve issues that implicate property of the estate, that, they can't do. That violates the stay for all the reasons that you've heard today. And if there's any question about it, if you look at Joint Exhibit 8, that's the directions that they're asking for, and Mr. Dietderich hit on this, they're asking for determinations as to property of the

estate, but as Your Honor properly mentioned earlier, is this Court's jurisdiction. It almost is that simple on this application. And there is no other application before the Court as we stand here today.

For all of the talk from the JPLs' counsel, Mr. Shore, about, Well, we really just want a joint protocol. No, it's not the case. The application shows the contrary.

And what is really being sought here, and, again, Mr. Dietderich hit on all of these points, is litigation over property of these estates. What the Committee is most concerned about, Your Honor, and, frankly, your first question hit on it, is duplication of effort, lack of efficiency, and costs, because the costs of these efforts come out of the creditors. And when I say, "creditors" in the context of this dispute, we're talking about the customers of the international exchange and they're the same. It's the same people we're fighting about and there's no benefit to any of those customers from all of what's gone on here this morning.

This is a jurisdictional tug-of-war and there's no reason for it. We are here, the Committee, representing all of those creditors, those customers of the international exchange. The debtors, of course, are here. All the assets of the estates are here. And the JPLs are here, through their Chapter 15 process.

There is no reason for any of the issues raised by this application to be heard in the Bahamas, so we would ask that the motion be denied. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Shore?

MR. SHORE: Three quick points, Your Honor. Again, Chris Shore from White & Case, on behalf of the JPLs.

Let me start with what Mr. Pasquale just did about the customers. That's the "I wish they weren't there" argument. It would be -- this would be a lot easier for the customers if there weren't two courts and there was only one court with jurisdiction over issues.

I didn't create the problem. The JPLs didn't create the problem. There are two jurisdictions right now with worldwide jurisdiction over issues affecting their debtors' estates. So, to say this isn't helping the customers, I can't do anything about that. It's just the process that has been put in place that Mr. Greaves and the other JPLs are trying to exercise their duties on.

Second, I heard from both counsel, the slippery-slope argument of, Well, what they really want to do, Mr. Pasquale said, it's file and prosecute the action. We're not asking for that. And I heard Mr. Dietderich say, Well, if they had just come to us and said, We want access to this, that wouldn't have been a problem.

That's contrary to the evidence. The evidence was in the declarations and in the testimony that the JPLs said, Could we have a discussion about what can go forward in the Bahamas and what can go forward in the United States?

And the response was, No, we can't have a discussion about it. There is zero tolerance for having any issue decided in the Bahamas, and if you file anything there, it will be a willful violation of the stay.

So I'm just trying to find a way to allow that conversation to happen. And let's be clear about what this is. You keep referring to it, and you're right: *In rem* jurisdiction. The Bahamian Court has *in rem* jurisdiction over the following assets: the cash -- now, they keep saying it's just a modicum of cash. From our perspective, it leads to the second asset. The debtors, from our perspective, Trading, stole $6.9 billion of customers funds and sent it to Alameda, who then frittered it away. But the Bankruptcy or the Bahamas Court has jurisdiction over that claim. It shares it with you. You both have worldwide jurisdiction over resolving that issue.

They have jurisdiction over the claim into properties. Those are all assets which are under control of the Bahamian Court.

This is what we want, ultimately --

UNIDENTIFIED SPEAKER: He's been talking --

THE COURT: Is there somebody on the line that we need to cut off?

THE CLERK: Yes.

THE COURT: Okay. Sorry about that.

MR. SHORE: If we file the application and we all have a discussion -- I like the newfound, good faith efforts of the debtors to say, Had they just asked us, we would have given them this. Have a discussion about that. What is the problem with us going in and asking for the Bahamian Court to determine whether or not the assets over which that Court has *in rem* jurisdiction, are held in trust, under the law of that forum?

The debtors' position, and I hope you heard the delay in Mr. Dietderich's voice in responding to your question on coming up with the right word. This is what they're worried about. The Bahamian Court looks at it and says, Under English law -- I'm looking at this -- these assets are held in trust. And I'm looking at this contract and these are your customers.

What they're worried is that somehow affects their estate. It affects their negotiating position. It affects their standing in front of this Court. That somehow this Court is just going to blindly say, Well, the English Court said that, so I'm going to do that.

That's -- Your Honor's clearly not going to be

doing that. But the mere fact that the debtors, the prejudice to the debtors is that there will have been a Court that spoke on the 2022 terms and service and said something about it, is not a basis for denying the JPLs from moving forward.

Now, we could fix it if we actually sat down and had a discussion over protocol. We could put in a provision in the order that says, Under no circumstances will any determination made by the Delaware -- by the Bahamas Court have any preclusive or any effect whatsoever in the United States without further order of this Court.

Okay. We could try to seal the proceedings so nobody knows what the English Court ruled. I don't know.

But the position that's been that with the debtors, contrary to their obligations under the cooperation agreement, is those conversations are dead. You are a deadweight loss. We don't want to deal with you. We wish we didn't have to deal with you. And now, you can't do anything in your case.

I'm just trying to avoid -- and I'm being clear -- I'm trying to avoid you having to write an order that says, Nothing the Bahamas Court will have -- does, will have any effect in the United States without, first, having a conversation. Could we fix this somehow?

But there's zero prejudice to the debtors, legally

cognizable prejudice by having the JPLs go to their Court and say, You've got *in rem* cash. It is the FTX Digital's cash. I need some rulings about what I can do with that cash or I need some rulings as to whether you would consider these my customers or somebody else's customers.

Zero prejudice to the United States debtors if what we do is we put in a provision that says, Nothing that the Bahamas Court does in all of this, will have any effect in the United States. And if they don't want to appear, then, fine. I don't care. They don't have to appear there if that provision is in there.

But what I don't want, which is what they're actually doing, which is starving my estate so that they can do, through you enforcing the stay, what they weren't able to do in the normal processes, which is just wish it all away.

We're going to get to the litigation. If the debtors' defense in all of this is, this property was never held in trust under those terms of service because they weren't a service provider on the cash, we'd welcome that litigation. We'll get to it. We'll get to it in some court.

It's just a question of when we have to put everything on the Bahamas on hold to satisfy the debtors' concern that they really just articulated to you now: What is the prejudice by having them doing? Well, it's going to upset the plan process and it could possibly tell people that

our view of the contracts is wrong.

We could fix that. But what we can't do is have them use the stay as a sword to deprive us from doing anything on the idea that Your Honor is going to be instructing the JPLs how to treat the property over which you don't have jurisdiction and the customer relationships that they have over which you don't have jurisdiction.

So, we're just asking, lift the stay to allow us to file the application. We're not prosecuting it. And if what we're talking about is putting a provision in the order that says, And pending further order of the Court, the Bahamian Court shall not take any action. And if it takes any action, that action will be void.

That gives us the opportunity to have a discussion and decide these issues, rather than have the debtors in the evidentiary record say, I'm not talking about it under any circumstances, and then come up in front of Your Honor and try to say, Well, if we'd just discussed this, it all would have been worked out.

We can work it out. I'm not trying to tread on your jurisdiction. I'm not asking for your jurisdiction to be curtailed in any way, your supervisory powers to be curtailed in any way; I'm just trying to solve this issue without leading to a diplomatic event between the United States and the Bahamas over two courts saying, I'm not

listening to the other.

Thank you, Your Honor.

THE COURT: All right. Well, I'm going to think about this overnight. I'll give you my ruling tomorrow.

But I will tell you now that under no circumstances would I ever defer a core jurisdictional issue to a foreign court. And the core jurisdictional issue here is, whose assets are these? And they're assets over which I have *in rem* jurisdiction. And that's something that has to be decided here.

I understand the Bahamian Court may have concurrent jurisdiction, but as a practical matter, they don't have access to the assets. Only I have access to the assets.

So I'm going to ask the parties to talk this evening, see if there's any way to resolve the issue based on the arguments that I've heard about what the limitations are on what the JPLs are asking for, and I will think about how I'm going to ultimately rule and I will do that tomorrow at the hearing, okay.

COUNSEL: Thank you, Your Honor.

THE COURT: Do we want anything else to go forward today or do we want to -- we still have a little bit of time. Do we have enough time?

UNIDENTIFIED SPEAKER: May I have a minute, Your

Honor?

THE COURT: Sure.

(Pause)

MR. LANDIS: Your Honor, for the record, Adam Landis, on behalf of FTX Trading, Ltd. We'd like to try to get as far as we can on an evidentiary basis on the sealing motions if Your Honor is inclined to let us push through.

THE COURT: Let's go.

MR. LANDIS: Thank you.

THE COURT: All right.

MR. GLUECKSTEIN: Thank you, Your Honor. Again, for the record, Brian Glueckstein of Sullivan & Cromwell.

The next motion, as Mr. Landis indicated, is the joint motion of the debtors and the Committee for an order authorizing redaction of certain confidential information of customers and individuals.

We do have -- the parties jointly have two witnesses with respect to this motion: Mr. Cofsky, the debtors' investment banker who testified on these issues before the Court previously, and Mr. Sheridan.

We, as the debtors, would like to call Kevin Cofsky to the stand as the first witness.

THE COURT: All right. Mr. Cofsky?

UNIDENTIFIED SPEAKER: (Indiscernible.)

MR. WENDER: Sorry, Your Honor. For the record,

David Wender with Eversheds, counsel for the Ad Hoc Committee.

And because the motion seeks similar relief, I thought the understanding was, at least, we'd rely on the same evidence and present supplemental argument with respect to the Ad Hoc Committee's motion, as well.

MR. GLUECKSTEIN: Yeah. I'm sorry, Your Honor.

I mean, the Ad Hoc motion is obviously related and so, we did think it made sense to, at least have the Court consider the evidentiary basis and arguments together.

THE COURT: That's fine.

MR. WENDER: Thank you, Mr. Glueckstein.

MR. PASQUALE: Your Honor, if I may?

THE COURT: Yeah.

MR. PASQUALE: Ken Pasquale, again, from Paul Hastings, for the Committee.

One thing just so Your Honor is aware of how we planned to split responsibilities on the joint motion, is the debtors will be responsible for the 107(b) presentation and argument and the Committee will be handling the 107(c).

THE COURT: Okay. Thank you.

THE CLERK: Please raise your right hand.

Please state in full, your full name, and spell your last name for the court record, please.

MR. COFSKY: Kevin Michael Cofsky, C-o-f-s-k-y.

KEVIN M. COFSKY, DEBTORS' WITNESS, AFFIRMED

THE WITNESS: I do.

THE CLERK: You may be seated.

Your Honor?

DIRECT EXAMINATION

BY MR. GLUECKSTEIN:

Q Good afternoon, Mr. Cofsky.

A Good afternoon.

Q Mr. Cofsky, can you please provide the Court, as a reminder, with your background and experience. Please, if you would.

A Yes. I'm a partner at Perella Weinberg Partners. I was a graduate from The Wharton School in 1992. I was an analyst at Houlihan Lokey in the restructuring area for two years before I went to the University of Pennsylvania Law School and the University of Pennsylvania Fels Institute of Government.

I practiced law for several years, clerking, as well as a corporate lawyer, Cravath, Swaine & Moore, and then returned to banking and have been focused in the restructuring area since approximately 2001. And I've been a partner at Perella -- I've been at Perella since 2007 and I've been a partner since 2015.

Q Mr. Cofsky, can you please describe, briefly, for the Court, the scope of work that yourself and your colleagues at

Perella Weinberg Partners have being doing, pursuant to your retention in these Chapter 11 cases for the debtors.

A Yes, Perella Weinberg Partners is acting as an investment banker to the debtors in this matter. A number of wide-ranging areas, including the exploration of the monetization of various assets, as well as working with the other professionals and the management team and the Board and the other stakeholders to evaluate a potential plan of reorganization and the ultimate exit of the Chapter 11 cases.

Q Can you please describe, briefly, your experience in terms of monetization of businesses, including with respect to customer lists over the course of your career.

A Yes, I think we dealt with this in my prior testimony in my declaration. I have represented a number of companies and businesses with respect to 363 sales and plan of reorganization sales, a number of which involved customers.

And as I testified previously and was in my original declaration, my understanding and belief is that the customers have, in this case, material value to the estate.

The identities and the lists of those customers and the ability of other competitors to gain knowledge of those customers would be detrimental to the estate.

MS. SARKESSIAN: I'm sorry, can I ask the witness to speak up or maybe bring the microphone a little closer.

THE WITNESS: Yeah, I'm sorry. I can do that.

MS. SARKESSIAN: I'm just having a little trouble hearing you.

THE WITNESS: Is that better?

MS. SARKESSIAN: Yes. Oh, much better. Thank you.

BY MR. GLUECKSTEIN:

Q Mr. Cofsky, can you elaborate a bit and explain to the Court your view today, as you sit here today, as to whether you believe there's value in the FTX debtors' customer lists.

A I do. As I indicated earlier, part of the work that Perella Weinberg Partners is undertaking is an evaluation of the potential to monetize or reorganize the assets of the estate, including the exchange. The estate has approximately nine million customers and as we evaluate the potential for the treatment of that exchange going forward, we believe that the existing customer base is extraordinarily valuable and we -- our understanding is based on our research and having looked at the costs incurred by other crypto companies, specifically, to solicit customers.

We have also already engaged in a significant outreach process, with respect to solicitation of third-party interests in participating in a process to either acquire, invest into, or reorganize the FTX Exchange. And based on those conversations, again, it's our understanding that the existing customers are extremely valuable and valued by folks

who would be interested in investing into a reorganized business.

Q Mr. Cofsky, do you have a view on whether the debtors' customers lists are a potential source of value in a situation where the debtors reorganize versus sell the exchange?

A I think that the existing customers in that list is valuable in both contexts. To the extent the business would be reorganized, those customers would likely be very interested if they're going to own a portion or a significant portion of the reorganized business, they would be very interested in trading on that exchange to generate incremental equity value, enterprise value for their new holdings of that.

Similarly, if the estate monetizes or seeks an investment from third parties into the exchange, that same value would ultimately inure to the benefit of those customers.

Q Do you view the debtors' customers lists as potentially having value on an independent basis?

A I do. Again, as we have seen in --

MS. SARKESSIAN: Sorry, I'm going to object, just because I don't understand what "independent basis" means.

MR. GLUECKSTEIN: I'm happy to restate the question.

BY MR. GLUECKSTEIN:

Q Mr. Cofsky, do you have a view as to whether you might be able, as the debtors' investment banker, to monetize the customer list itself and create value for the estate?

A Yes. So, I understand the question to be, you've asked me if I think that the identities of the customers and the customer lists would be valuable to the business if it's reorganized and the business by third parties if it is sold or otherwise seeks a third-party investment.

I take this question to mean, would the list be valuable if we were unable to sell or chose not to sell and/or were unable or chose not to reorganize, but simply to sell the customer lists. And I do believe that would be valuable and the basis for that belief is the conversations we've had initially with third parties.

Q You testified on these issues before this Court back in January, with respect to the same questions around sealing the customer lists; do you recall that?

A I recall that, yes.

Q And do you recall, at the time, back in January, you offered testimony to the Court around the question of whether disclosure of the customer lists would jeopardize the debtors' ability to maximize value; do you recall that?

A I do.

Q As you sit here today, do you have a view today as to

whether the immediate disclosure of the debtors' customer lists would jeopardize the debtors' ability to maximize value?

A I do. I believe that releasing that information -- that information is valuable, as I said, and I think releasing that information would impair the debtors' ability to maximize the value that it currently possesses.

Q Mr. Cofsky, could you please provide information for the Court as to what you and your team have been doing since January in order to try to begin to realize the value from the customer lists.

A Yes, as I indicated, we have spent considerable time working with the debtors' other professionals, the UCC professionals to evaluate the potential for a reorganization of the exchange, the core exchange, as well as the potential to seek third-party investment into that or to sell that exchange.

And as I indicated, we have reached out to a significant number of third parties and have begun the process of discussions with respect to that evaluation process with those third parties.

Q And can you just clarify, when you say the "core exchange," what you're referring to there.

A The international exchange, although, we have also evaluated the U.S. exchange and the potential for that to be

reorganized or not.

Q In your view, is there still work remaining to be done, with respect to realizing the future, if any, of the FTX.com Exchange?

A Yes. There is still significant work to be done. As I indicated, we have been working hard to evaluate and seek to implement the potential to reorganize that exchange, but there's a lot of work that would need to be done in order to accomplish that; in addition, as I indicated earlier, we have begun the process of discussions with third parties, but we're in the early stages of that process and that will take some time.

Q As you sit here today, do you have any sense as to, generally, how long it might take to complete that process?

A The process may -- it's a great question. I don't have specificity for you. The process is uncertain, insofar as we're relying on third-party participation to understand the interest in acquiring or investing into the rehabilitation of that core exchange.

We are also, potentially, going to implement that reorganization through a 363 sale or through a plan of reorganization. So in many ways, the ultimate outcome may be tied to the outcome of this case and it's difficult to determine with specificity exactly when that might be.

Q What is your view with respect to your ongoing process

from the immediate disclosure of the debtors' customer lists, if any?

A Can you repeat that question, please?

Q Sure, let me rephrase the question.

Do you have a view as to whether your current process would be impacted by the immediate disclosure of the debtors' customer lists?

A Yes, I think it would be negatively impacted, potentially significantly.

Q Mr. Cofsky, in connection with your ongoing analysis, has your -- have you and your team formed a view as to whether competitors would be able to locate and contact the debtors' customers, if only their names were publicly disclosed?

A We have. I testified briefly on this -- excuse me -- in my last testimony.

We've gone out and we've looked at the top-200 customers to validate what I had testified, with respect to a smaller number of customers. And with that --

MS. SARKESSIAN: I'm going to object. Based on his prior testimony, I understand this was not personally done by the witness, so maybe he could clarify to what extent he did this work personally.

THE COURT: Do you want to establish a foundation.

BY MR. GLUECKSTEIN:

Q Mr. Cofsky, okay, let's back up a half step.

Can you describe your development in the work that you're beginning to talk about with respect to the analysis of customer names in preparation of your testimony.

A Yes. I personally looked at the spreadsheet that included all of the names and I directed my team to do the research to determine the extent to which they would be able to identify customers on that list, based solely on the customer names. And I discussed -- it was an iterative process and we talked about the methodology to do that. And we talked about what information was located and whether that ultimately could be deemed to be an identification or a highly likely identification or something else.

Q Did you --

MS. SARKESSIAN: I would object to any testimony, based on what any other person told this witness and not what he, himself -- if he did the research, it sounds like he did not. So I object to any testimony that's based upon information that was given to him by another person.

MR. GLUECKSTEIN: Your Honor, I believe Mr. Cofsky should be able to testify with respect to work that was done at his direction, that he was involved with and reviewed as far as the outputs of, and he's prepared to testify about.

THE COURT: I'll overrule the objection.

MR. GLUECKSTEIN: Thank you, Your Honor.

BY MR. GLUECKSTEIN:
Q So, Mr. Cofsky, you were talking, you said in furtherance to the discussion that in the testimony you provided in January, you, subsequent to that, commissioned and participated in an analysis of the debtors' top-200 customers, correct?
A That's correct.
I'm sorry, would you mind if I get some water, please?
Q Oh, sure. Sure. Hold on one moment.
(Pause)
THE COURT: I never saw such a flurry of activity.
(Laughter)
MR. GLUECKSTEIN: There's a lot of people standing at their ready to assist.
(Pause)
MS. SARKESSIAN: Can I have the question repeated, because I didn't hear how many customers it was.
BY MR. GLUECKSTEIN:
Q Mr. Cofsky, you could please explain for the Court the scope of the analysis that you commissioned with your team on the topic of whether revelation of customer names would be enough for competitors to locate those customers.
A Yes, we looked at the top-200 customers, which I recognize is a subset of the nine million potential customers. Based on the dollar amount of the claims at

petition date, that would represent approximately 2.4 billion of claims, which we thought was a reasonable set of customer names to review.

Q And can you describe for the Court both, the analysis that you did and the findings of that analysis.

A Yes, we did an analysis by looking through Google, but looking through LinkedIn, and by looking through Twitter feeds. This is not our core area of expertise. I actually believe that a well-funded and persistent party might be able to gain more confidence, but we wanted to be reasonable with our time.

And the results were, we thought, were compelling. And the results were that with respect to -- we looked at this from a -- I can describe it on a percentage basis, as well as a dollar number of claims, but the percent of the 200 customers that we were able to identify purely on the basis of names, that was approximately 46 percent. 34 percent of those we deemed to be highly likely that we had identified them. The additional 12 percent, we viewed as likely, but not 100-percent certain.

On a dollar basis, we were able to locate in excess of a billion dollars of those claims, which represented, I believe, 30 -- I'm sorry, 42 percent of the 200, the total of $2.4 billion. That's the greater than a billion dollars of located claims.

Q Mr. Cofsky, the debtors also have customers on their customer lists who, as of the petition date, had a zero-dollar balance, correct?

A Yes.

Q Do you have a view as to whether customers who had a zero-dollar balance on the petition date, would still be valuable names, if publicly revealed?

A Yes, I do. Our analysis did not go back to determine the extent to which those customers withdrew significant funds prior to the filing. Our analysis, and what I summarized, related solely to the value of those claims at the petition date. Obviously, another workstream will be the determination of whether there are preference actions or not, but even beyond that, to the extent that there were customers who, at one time or another add material balances and/or traded significantly on the exchange and generated material value for the exchange, those types of customers would be valuable, I believe, to the exchange going forward.

And the customer lists that we're talking about, I think, would be valuable to third parties if they were interested in acquiring that, because, ultimately, they're not focused on whether there's a balance at the time of the filing; they're focused on the extent to which those customers would trade and generate revenue for them going forward.

Q Mr. Cofsky, how did the results of the analysis you did inform you view, if at all, as to whether or not disclosure of the customer names on their own would jeopardize the debtors' ability to maximize value?
A He reinforced that belief. They validated that belief that those customers could be identified with reasonable effort and that to the extent that the names alone were not redacted and were released, customers would -- clients, other third parties that would otherwise need to expend resources not to solicit those customers and/or would need to compensate the debtor in order to acquire those identities, would no longer have an interest in doing so or would have a lesser, significantly lesser interest in doing so.
Q And does your view as to value of individual -- of customer names include both, individual and institutional customers contained on the customer lists?
A Yes, that's correct.
MR. GLUECKSTEIN: No further questions, Your Honor.
THE COURT: Thank you.
Cross?
MR. WENDER: Actually, Your Honor, there's additional, just some additional direct, please?
THE COURT: Oh, go ahead. Yep.
MR. WENDER: Thank you, Your Honor. For the

record, David Wender with Eversheds Sutherland, counsel for the Ad Hoc Committee of Non-U.S. Customers.

DIRECT EXAMINATION (Continued)

BY MR. WENDER:

Q Good afternoon, Mr. Cofsky.

Just a few short questions, because you spoke about disclosing the names and how that might impact the value.

The disclosure of the names or customer information, either by the debtor or other parties, that would similarly impact value; is that your understanding or belief?

A Yes, my belief is that disclosure of the names, regardless of who disclosed them, would degrade value.

Q This might be a dumb question and I apologize: Are you familiar with Bankruptcy Rule 2019?

A Not by the number.

Q That's appropriate.

It's a rule that requires when customers or creditors act in concert, they have to disclose names, address, and information relative to holdings.

If a group of creditors had to disclose their names, their address, and holdings, would that be detrimental to the value of those people, as well, and to the debtor?

A My belief is that disclosure of any customer identities would degrade value.

Q Great. Thank you.

THE COURT: Now, cross-examination?

CROSS-EXAMINATION

BY MS. SARKESSIAN:

Q Good afternoon, sir. Juliet Sarkessian, on behalf of the U.S. Trustee. I do have a few questions for you.

Now, some of your testimony related to the value of the customer names in a situation in which the debtors reorganized, correct?

A Correct.

Q And based on either what you've heard today or your familiarity with the debtors, do you have an understanding of approximately when the debtors believe they're likely to get a confirmed plan?

A Yes, I have a -- I saw the work plan that was put on the screen earlier.

Q Right. And it was second quarter, I believe, of next year, correct?

A I believe that's correct, yes.

Q And do you understand whether from the petition date, the customer accounts have all been frozen; is that right?

A That's my understanding.

Q Customers cannot get access to either their cryptocurrency or cash that they have in the accounts; is that right?

A That's my understanding.

Q And is it your understanding that that freeze would continue at least until the plan was confirmed and then went effective?
A I believe that would be the case; that's my understanding.
Q And so that would be more than a year with these accounts being frozen, correct?
A Unfortunately, yes, I think that's the math.
Q Customers can't even get to the cash that they have in the accounts, right?
A I believe that's correct, yes.
Q So, with that in mind, does the fact that those accounts have been frozen that long impact the value of the customer list? You know what? I'm sorry, let me withdraw that question. I forgot that we were talking about reorganization.
So, if the debtors reorganized, is it your belief that spite having their accounts frozen for over a year, that the debtors' customers will want to continue with the reorganized -- continue to be customers with the reorganized debtors?
A I do. I'm also hopeful that we can accomplish an outcome in a shorter period of time, but yes, I believe that at the time at which a reconstituted exchange is able to be stood up and customers have the ability to trade on that, I

believe that they will want to do so.
Q Can I ask you why you think that, for somebody who's not been able to get the cash out of their accounts, let alone, crypto, for over a year, that they're going to want to continue with the company that froze their accounts?
A Yes, it's a very good question. We believe that if an exchange is reorganized, it will be done so in a manner which will be regulatorily complaint, will ensure that the custody of the customer accounts going forward are unambiguously secure, and will provide a trading platform that will be first-class. And if given the opportunity, from a number of respects to participate on that exchange, as opposed to the exchanges that are currently available to them, they would much prefer to trade on that form of a platform.
And significantly, at the moment, and I believe highly likely, the customers will be, by far, the largest creditors of this estate and so if we reorganized the exchange going forward, those customers would be equity owners, potentially, of all, or a significant portion of that reorganized exchange. And so having the ability to transact on the exchange where they are equity owners, as opposed to transacting on another exchange where they're generating fees for another exchange that they don't own, I think, would be an easy question for them. I think they would much prefer to transact on an exchange where the fees that they're paying

are ultimately benefiting their own equity holders.

Q Is the concept that you're talking about with the customers being equity holders, well, first of all, what percentage of the equity do you think the customers will actually hold?

MR. GLUECKSTEIN: Objection, Your Honor.

BY MS. SARKESSIAN:

Q Are we talking about 10 percent or --

MR. WENDER: Objection, Your Honor. I think we're getting pretty far afield. And to the extent that we're talking about a plan that's in formation, I'm not sure that's appropriate testimony at this stage.

THE COURT: Yeah, I don't know what the relevance would be at this time.

MS. SARKESSIAN: Well, Your Honor, his testimony was that these customers, these names of customers are valuable if we reorganize --

THE COURT: Uh-huh.

MS. SARKESSIAN: -- with the idea that they're going to stay with the exchange. And he said one of the reasons that they're going to stay with the exchange is they're going to be equity owners. That was his testimony.

THE COURT: That's one of the possible outcomes, I think he said.

MS. SARKESSIAN: One of the possible outcomes. So

I'm asking him about that possible outcome.

THE COURT: What's the question?

MS. SARKESSIAN: The question is, when you're saying it's based on -- when you're saying your testimony is based on the assumption that they're going to be equity owners, what percentage of the equity are you anticipating that they would own?

THE COURT: Well, I think that's speculation at this point.

MR. GLUECKSTEIN: Yeah, I would object, Your Honor. I think Ms. Sarkessian's question does misstate the testimony, but I think this is all speculation at this point.

Mr. Cofsky simply testified as to one possible outcome here.

THE COURT: Sustained.

MS. SARKESSIAN: Thank you, Your Honor.

BY MS. SARKESSIAN:

Q Let me ask you a different question.

Your testimony that these customers would remain -- you believe that these customers would remain with the FTX platform in a reorganization and, therefore, their names are valuable, is that based on an understanding that they would be getting equity in lieu of getting their actual accounts back, the money that's in their actual accounts?

A I would hope that we can recover all of the value that

people put on the platform, but that remains uncertain. And so to the extent that those customers do not receive 100 percent of their funds back for any reason, they will have incremental claims. And it's those claims that I'm referring to, which is the extent to which the estate will have assets to satisfy those claims.

And I do want to be clear and also responsive to your question, whether the exchange is reorganized or whether the exchange is sold or whether he ever the exchange is part of a partnership or receives investment from third parties for a portion of the equity, a significant portion of the value of that enterprise going forward, I believe, will be the customers, their identity, and the extent to which they're going to trade on this platform or another platform.

So, the questions that you asked were very good, it's just that -- and I apologize for not being able to be more specific, but we're at the early stages of evaluating which one of those potential alternatives, we think will maximize value.

Q I understand there's a lot of suppositions in your testimony, I was just trying to test them just to make sure I fully understand what your testimony was based on.

So let me ask a different question. You testified that you also believe that the names of the customers would be valuable -- that they could be monetized either just in and

of themselves, right, a customer list to be sold; is that correct?

A Yes, I think that's one alternative.

Q And then they also could be monetized as part of a 363 sale, correct, was that also -- maybe I misstated it.

A Yes, I think those may be the same thing, but selling the customer lists solely or selling assets, together with the customer lists, whether those assets include an exchange or some other package of assets is one possibility I would think.

Q Okay. And in connection with that, did you have an opportunity to review the declaration of Jeremy Sheridan that has been filed in support of this motion?

A I did not.

Q Okay.

MS. SARKESSIAN: Just one moment, Your Honor. I'm sorry.

(Pause)

BY MS. SARKESSIAN:

Q Are you aware whether Mr. Sheridan -- sorry -- are you aware of whether the customers of FTX also used other platforms, other cryptocurrency platforms?

A I am not aware either way.

Q Okay. Now, I want to go to your testimony about determining that you looked at your -- people you were

supervising, you indicated, looked at approximately 200 customers to see with just using their names, if more information could be located, correct?

A Yes, we looked at 200, precisely, and the objective was to determine whether we could identify those individuals and locate them.

Q So that was my question, what was the other -- you were looking for -- if you could find addresses, like, street addresses or email addresses or both?

A We wanted to determine using, again, limited resources, which was just Google, LinkedIn, and Twitter, whether we could identify and locate those individuals and find a way to contact them. And so that was the objective, was to determine the extent to which solely the identities of those individuals would be valuable. And part of that value is finding a way to actually locate these people and solicit them if you're a competitor and you want to get them to trade on your platform.

Q And so that would be either a street address or an email address or both?

A Or --

Q Or a telephone number?

A Or another way to locate them, for example, on Twitter --

Q Oh, okay.

A -- Facebook, other social media platforms.
Q Now, of those 200, do you know how many of them were individuals versus some type of corporate entity?
A I don't know offhand. That information was in the spreadsheet, but I don't recall offhand.
MS. SARKESSIAN: Those are all the questions I have for this witness.
THE COURT: Thank you.
MR. FINGER: Good afternoon, Your Honor.
THE COURT: Mr. Finger, good afternoon.
MR. FINGER: David Finger of Finger & Slanina, on behalf of the Media Intervenors.
At this time, I'd like to introduce to the Court, Katie Townsend of the Reporters Committee for Freedom of the Press. She's an attorney with them. Her admission *pro hac vice* has been granted, and with the Court's permission, she will present on behalf of the Media Intervenors.
THE COURT: Okay. Thank you.
MS. TOWNSEND: Good afternoon, Your Honor.

CROSS-EXAMINATION

BY MS. TOWNSEND:
Q Good afternoon, Mr. Cofsky.
My name is Katie Townsend. I'm one of the attorneys representing the Media Intervenors in this matter. I'll try not to retread any ground that Ms. Sarkessian just covered.

But just to clarify, of the -- you have no idea sitting here today how many of debtors' nine million customers are already using a competitor platform; is that correct?

A I do not know that sitting here today; that's correct.

Q Of the top-200 customers that you directed your team to take a look at, you don't know how many of those 200 are already using a competitor platform, do you?

A I do not know that.

Q Does it matter for purposes of the value that you ascribe to the customer base, whether or not those individuals are using, or institutions, are already using another platform?

A To the extent that they are using another platform for a longer period of time, that injection risk to that value. It would degrade that value over time. It wouldn't eliminate that value, but, sure, we will be competing for those customers.

Q Just to be clear so I understand where the value here is coming from, the value of the customer base is their actual use of the platform, correct? It's not their name; it's whether or not they have an account on the platform; is that accurate?

A I don't think that's accurate if I understand the question properly. The customers are on the platform and occur on the list that I reviewed, the nine million

customers, because they traded on the platform. They, therefore, are, because they traded on the platform and generated revenues for the historical exchange, they, therefore, would more likely than not, be folks who are interested in crypto and would trade on crypto on another exchange or on this exchange.

And so the identities of these clients as being customers of FTX are valuable to competitors who are looking to attract additional customers to their platform. And it is much more efficient for them to solicit the customers of FTX directly to trade on their platform, as an example, than it would be to just have a generalized marketing endeavor.

Q But so long as those customers, even if they're trading on that other platform, continue to trade on the FTX platform, that doesn't affect the value of that customer to FTX, does it?

A Yes, it does.

Q How so?

A So, to the extent that we are not currently trading, over time, the longer those customers are on another platform, the greater the risk is. It doesn't mean that they become worthless, but it means that to the extent that we are reorganizing the platform, and we're well aware of this, and time is a critical issue, and so to the extent that we are able to reorganize the platform in a short amount of time and

get these customers an environment that is secure and regulatorily compliant that they can trade on, the less we have to worry about a competing platform.

But like any business, to the extent that your customers are utilizing services at a competitor, they're less valuable to you.

Q Let me ask it this way: If all nine million of the customers who had accounts at the FTX platform stopped using that platform, the value of that asset, that customer base is zero; is that fair to say?

A No.

Q What is the value of that asset if they are no longer using the platform?

A Well, those customers are no longer using the platform today because it doesn't exist. It doesn't mean that they don't want to use the platform --

Q Okay.

A -- and it doesn't mean that they have declared that they are never going to trade crypto, again. I think, quite to the contrary, as I said, with only 200 of the top customers, their claims as of the petition date were $2.4 billion. I think those would be highly valuable potential customers for any platform and people would pay a lot of money to know who those people are and try to get them to trade on their platform. Whether they're on one platform

today, all the other platforms, I'm sure, would like to pay to know who those people are.

Q What's your basis for saying that you're sure that other platforms would pay to know who those people are?

A As was indicated in my original declaration, the other exchanges have programs in place. They pay money to look for referral programs. They pay commissions to solicit customers. So those customers are valuable and finding them is worth paying for. They've indicated that through their actions.

And in our early stages of outreach, with respect to the third-party process, we have received that input, that the customer lists themselves are valuable to people.

Q Have you done any kind of survey of customers to test their views on whether they intend to stay with the platform, whether it's reorganized or sold or continues in some other fashion?

A We have not had a formalized outreach process, but we have had a long engagement and robust process. The process that I described for the potential reorganization and the third-party outreach is being done, together with the Unsecured Creditors Committee that represents those customers, appeared we have regular conversations with the members of the Committee themselves, who are customers.

Q But you didn't attempt to undertake any other kind of

survey or research, in connection -- specific research to ascertain that information, did you?

A I want to make sure I'm -- we haven't undertaken a broad-market analysis, but I want to make sure I'm answering your question.

Is that what you're asking?

Q You haven't attempted to specifically identify or do any kind of, like I said, survey to identify how many of the, let's say top-200 customers, would want to stay on -- continue to trade on the platform, have you?

A I have not asked that, no.

Q You testified previously that part of the basis for your opinions were bids that you examined in the Celsius bankruptcy; is that right?

A I don't think I said that.

Q I believe you testified on the January 12th, during the January 12th second day hearing, that we also -- and this is just to refresh your recollection:

We've also reviewed the bids that have been submitted in the Voyager case and in the Celsius case and took note of the fact that not only were customer assets and lists being acquired in and a value ascribed to the business itself, but that these were actually incremental elements of value, which would be allocated to each customer that went on to the acquirer's platform?

Do you recall that testimony?
A I do. I would prefer if you can put that in front of me, if that's possible, if you're going to ask questions about that.
Q Sure. If it's helpful, I don't intend to ask questions about the testimony itself, but I did want to ask a little bit about the bids that you've reviewed in the Celsius case.
A I don't know that I said "bids." I would like to see what I said to make sure that -- I believe it was five months ago and I want to make sure that I'm --
Q Well, let me strike that.
Have you reviewed bids in the Celsius bankruptcy case?
A In the Celsius case, yes, I did.
Q Okay. And there was recently a three-way auction in that are bankruptcy case; is that correct?
A That's correct.
Q Okay. And that three-way auction involved Fahrenheit, which was the winning bidder; is that correct?
A They have been selected as the highest and the best, but they have not, to my knowledge, been approved by the Bankruptcy Court yet.
Q Okay. And did you review Fahrenheit's bid in the Celsius bankruptcy?
A I did. I'm not sure if it's proper for me to be speaking anything further about that in this matter, given

the confidentiality agreements I have in that case, but yes, I did.

Q Well --

MR. GLUECKSTEIN: Your Honor, I'm going to object at this point. Mr. Cofsky has not testified at all today about anything in the record at this hearing with respect to Celsius. Counsel is now asking him about bids that are pending before another Court that he may have reviewed outside of his engagement for FTX, so I don't see how this is either responsive to his direct testimony or appropriate.

MS. TOWNSEND: Well, Your Honor, he previously testified that part of the basis for his opinions and the opinions that he's offering are bids that he reviewed in the Celsius bankruptcy matter and in the Voyager bankruptcy matter. There have been some developments in those cases that I think I'm entitled to ask him about, given that he's here to update his testimony on things that he has learned or what has proceeded since the January 11th hearing, so --

THE COURT: Well, I think he testified that he wasn't -- he didn't recall testifying that he had reviewed bids and that's why he wanted to review the actual testimony itself, but you didn't show him, so I'm not going to hold him to that.

And if he has confidentiality agreements and he's representing somebody else in connection with the Celsius

case, I'm not going to allow him to violate those confidentiality agreements.

MS. TOWNSEND: I'm happy to show him the testimony, Your Honor. He's already testified that in those bids that he reviewed, there was incremental value attached, not only to the customer base as a whole, but also the individual customer names. That's the entire basis of his testimony, so I would like to explore that to some extent.

THE COURT: Well, I don't know that it's the entire basis of his testimony, but go ahead.

MS. TOWNSEND: It's the value --

MR. GLUECKSTEIN: Your Honor, it's certainly not the entire basis and it's zero percent of his testimony today. And the bid that Counsel is asking him about now didn't exist in January. She's asking about a bid that, by her recitation of this, was just put before the Celsius Bankruptcy Court.

So, I renew my relevance objection.

THE COURT: I sustain it. Let's move on.

MS. TOWNSEND: Just one moment.

(Pause)

MS. TOWNSEND: No further questions, Your Honor.

THE COURT: Thank you.

Any other cross?

(No verbal response)

THE COURT: Redirect?

MR. GLUECKSTEIN: No further questions, Your Honor.

THE COURT: All right. Thank you.

You may step down. Thank you, Mr. Cofsky.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: And now we have Mr. Sheridan. I'm anticipating he's going to take more than 25 minutes?

MR. GLUECKSTEIN: Yes, Your Honor.

THE COURT: And I hate to leave witnesses --

MR. GLUECKSTEIN: Including the cross-examination, yes.

THE COURT: I hate to leave witnesses hanging overnight if it's not necessary. And since we're coming back tomorrow morning, why don't we just pick up with Mr. Sheridan in the morning.

Anything else we can do in the meantime before we recess for the day?

MR. GLUECKSTEIN: Your Honor, just to clarify, what time would you like to resume tomorrow?

THE COURT: Let's start at 9:30.

MR. GLUECKSTEIN: 9:30. All right. Thank you very much, Your Honor.

(Counsel confers)

THE COURT: All right. Anything else before we recess?

MR. GLUECKSTEIN: Not from the debtors, Your Honor. Thank you.

THE COURT: Okay. Thank you.

We'll recess until 9:30 tomorrow morning.

(Proceedings concluded at 1:35 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling June 8, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams June 8, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski June 8, 2022
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand June 8, 2023
Coleen Rand, CET-341
Certified Court Transcriptionist
For Reliable

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 22-11068 (JTD)
FTX TRADING LTD. *et al.*,	
	(Jointly Administered)
Debtors.	
AUSTIN ONUSZ, CEDRIC KESS VAN PUTTEN, NICHOLAS J. MARSHALL and HAMAD DAR, on behalf of themselves and all others similarly situated,	Adversary Proceeding No. 22-50513 (JTD)
Plaintiffs,	
v.	
WEST REALM SHIRES INC., WEST REALM SHIRES SERVICES INC. (D/B/A FTX US), FTX TRADING LTD., ALAMEDA RESEARCH LLC, SAM BANKMAN-FRIED, ZIXIAO WANG, NISHAD SINGH, and CAROLINE ELLISON,	
Defendants.	
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES, INC.,	Adversary Proceeding No. 22-50145 (JTD)
Plaintiffs,	
v.	
FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1-20,	Courtroom No. 5 824 Market Street Wilmington, Delaware 19801
Defendants.	Friday, June 9, 2023 9:30 a.m.

TRANSCRIPT OF CONTINUED HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors and Debtors-in-Possession:	Adam G. Landis, Esquire LANDIS RATH & COBB, LLP 919 Market Street Suite 1800 Wilmington, Delaware 19801
	-and-
	Brian D. Glueckstein, Esquire SULLIVAN & CROMWELL, LLP 125 Broad Street New York, New York 10004
For the US Trustee:	Juliet M. Sarkessian, Esquire OFFICE OF THE UNITED STATES TRUSTEE UNITED STATES DEPARTMENT OF JUSTICE 844 King Street Suite 2207, Lockbox 35 Wilmington, Delaware 19801
For the Ad Hoc Committee of Non-US Customers of FTX.com:	David A. Wender, Esquire EVERSHEDS SUTHERLAND (US), LLP 999 Peachtree Street, NE Suite 2300 Atlanta, Georgia 30309

(APPEARANCES CONTINUED)

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (CONTINUED):

For the Ad Hoc Committee of Customers and Creditors of FTX Trading Ltd., *et al.*:	Jeffrey S. Sabin, Esquire VENABLE, LLP 151 West 42nd Street New York, New York 10036
For the Official Committee of Unsecured Creditors:	Kenneth Pasquale, Esquire Isaac Sasson, Esquire PAUL HASTINGS, LLP 200 Park Avenue New York, New York 10166
For the Media Intervenors:	KatieLynn B. Townsend, Esquire REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS 1156 15th Street, NW Suite 1020 Washington, DC 20005
For the Joint Provisional Liquidators of Emergent Fidelity Technologies, Ltd.:	Jason N. Zakia, Esquire WHITE & CASE, LLP 111 South Wacker Drive Suite 5100 Chicago, Illinois 60606

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interest.

THE COURT: I think everything has to be disclosed under 2019.

MR. WENDER: Okay. Thank you for that clarification.

THE COURT: Yeah.

Okay. Any other questions?

(No verbal response)

THE COURT: Okay. All right.

That brings us to the main event, I guess, everybody's been waiting for; how I'm going to rule on the application or the motion by the JPLs to lift the automatic stay.

I was thinking about this lying in bed at 3 o'clock this morning, trying to figure out what I'm going to do with this mess and I was thinking: What is the more important thing here? What do I have to consider? What's the most important thing to consider?

Excuse me, I'm having a little trouble with my voice.

The most important issue in this case is what's in the best interests of the customers and the creditors, because that's what this case is all about; getting value back to the customers and the creditors. And that should inform all of my decisions and then, particularly, this

decision about how to -- whether or not to lift the automatic stay.

So, what are the issues involved here? And it's a tangle of issues here. We have who are the customers and whose customers are they? Are they customers of FTX Trading or other U.S. debtor entities? Or are they customers of FTX Digital, Inc., the Bahamian entity? Are the assets at issue held by the U.S. debtors or the Bahamian debtors? Are they held in trust for the benefit of creditors or do they belong to the estates, the various estates?

If the assets are FTX Digital's, and I can make that conclusion at some point during the course of this case, are they subject to a clawback as fraudulent conveyances? And those are issues that also have to be decided in this case.

Where are the assets located? Are they located in the U.S., which gives me *in rem* jurisdiction over them? Are they located in the Bahamas, which gives the Bahamian Court the *in rem* jurisdiction?

As I said yesterday, I'm not going to defer to, and I would not defer to any other court the question of: What constitutes assets of the debtors in the cases before me?

And contrary to Mr. Shore's colorful argument, it's not based on the fact that the Bahamas don't have

nuclear weapons. I would do that even if it was France, as I think he referred to.

And so the question, then, is, so where can that relief be granted? This is the only Court that can grant complete relief regarding the assets that are under the jurisdiction of this Court that relate to -- that are being held by the debtors in these cases and that are subject to the question of how to allocate them. Do they all belong to the U.S. debtors? Do some of them belong to the Bahamian debtor?

At this point, I don't know; that's an open question.

Of course, this question about *in rem* jurisdiction begs the question that the assets that are held in the Bahamas, the Bahamian Court has control over them; they have *in rem* jurisdiction. So, how -- and that Court could make its own decisions about how those assets are going to be distributed and they can complete -- and the Bahamian Court could say, We don't care what the U.S. Court decides; in fact, I think that's what the JPLs argued to me on the first day of this case. Judge, we don't care if -- the Court in the Bahamas isn't going to care what you do. They're not going to enforce any of your orders. I thought that might have been an overstatement, but that's what was said.

So, you know, it puts me in an awkward position,

obviously. I certainly would have no basis to order the Bahamian Court to do or not do anything. I can't. I have no control over that Court and what they decide to do.

But because the JPLs are proposing to make a filing with the Court in the Bahamas, which, contrary to their arguments, goes well beyond merely asking for the Bahamian Court to establish protocols. My reading of the application is they're asking the Court to make decisions about whose assets are they? Are they assets of the U.S. debtors? Are they assets of the Bahamian debtors? And not just the assets located in the Bahamas, but all the assets, including those located, here in the United States.

So something -- I lost my train of thought there -- so what the JPLs are doing is they're asking the Court in the Bahamas for substantive relief that would absolutely have an effect on the debtors of this case, so they need to have relief from the automatic stay, because the assets that are here that are under the control of this Court and the debtors here, are subject to the jurisdiction of the Court.

So, have the JPLs met their burden of establishing the need for relief from the automatic stay?

From the evidence that was introduced at the hearing the debtors established that there are several forms of harm as to the U.S. debtors: the criminal costs

associated with litigating the same issues in two different courts. It's not insubstantial; we're talking millions of dollars.

The confusion to creditors who are trying to figure out, am I a creditor in the Bahamas or am I a creditor in the United States? And those creditors, again, I go back. The first issue, the first concern is, how do we protect the creditors and the customers? Those creditors, some of them might want to participate, as the Ad Hoc Committee here wants to participate in the case here.

Are they going to have to retain counsel down there and participate in both proceedings and increasing the costs to them? And, by the way, incremental costs for the debtors to appear and the Creditors Committee to appear in the Bahamas, comes out of the pocket of the creditors. And everything goes back to the creditors, the interests of the creditors.

And, finally, the delay in the case. It's going to take time for both courts to litigate the issues. And I know there was some discussion about having a combined hearing with the Bahamas and this Court at the same time. I'm not going to opine on that one way or the other at this point. But I will point out that the cost of doing that are not insubstantial either.

As I mentioned yesterday, I was involved in the

Nortel case and I know it cost tens of millions of dollars just to set up the infrastructure to be able to have a joint hearing with the Canadian Court.

So we're talking about a lot of increased costs that comes out of the pocket of the customers and the creditors.

The only harm articulated by the JPLs that I could discern from the testimony is that they can't carry out their fiduciary duties because they can't go to the Bahamian Court ask and for them to decide these issues. But as the debtors pointed out yesterday in their argument, that's not the issue here. The harm to the JPLs is not the issue; it's the harm to the customers and the creditors.

Now, and finally, just to close out on the standard for prevailing on a motion to lift stay, is prevailing on the merits of the underlying claim. And that, I don't have any idea at this time. I have no idea. It's an open issue. It's got to be decided. And there has to be a trial if it can't be resolved. We have an adversary proceeding pending here.

And I know the JPLs have filed a motion to dismiss that, at least partially, on the idea that it was in violation of the agreement between the parties on how to handle the issues between the two courts. But I would ask the JPLs to reconsider that, because we can't. We've got to

get this case moving and if we're going to be arguing over issues like that, it's not helpful.

Because at the end of the day, even if it did violate the agreement between the parties, I'm probably going to allow it to go forward, unless there's some other basis for dismissal. And I admit I haven't spent a lot of time looking at the motion to dismiss, but if it's only based on the idea that the debtors here violated the agreement between the parties, I might say, Yeah, I'll slap you on the wrist for violating the agreement, but I'm not going to dismiss and have to start all over again. Let's get the case moving. Let's get those cases moving forward.

So on the -- again, prevailing on the underlying issues, I don't know.

Now, the JPLs are certainly free to go to the Bahamas Court and tell them what happened here today, advise them of my ruling. And I don't know what the Bahamian Court will do in response to that, but again, I have no control over the Bahamian Court. But that might be enough to satisfy their fiduciary obligations.

At least they'll go back and say, We tried. This is how it came out. We lost and we need to move forward.

Now, I do believe, as I mentioned, you know, the *in rem* issue, as between assets here and assets in the Bahamas, obviously, the Bahamian Court is free to ignore any

ruling I make, whether or not the assets belong to the U.S. debtors or the Bahamian debtors. And they can go forward and have their own hearing and make a ruling on how that's going to play out for the assets that they hold.

So the case is begging for some kind of a protocol between the parties to resolve that issue alone. I mean, we're going to end up -- there's a possibility it could end up with inconsistent rulings in both courts and that might happen if we have a protocol or not.

But at least I'm going to order the JPLs and the debtors to mediate the issue. Retain a good mediator, someone with experience in the area, so come up with a way to see if there's any kind of protocols that can be put in place to address these issues.

In the meantime, we're going to go forward with the adversary proceeding that I have before me and I want to do it in as expeditious manner as possible, because we're wasting the customers -- or the customers' assets are wasting away every day that we spend in bankruptcy. So let's try to find a way to cooperate and find a way to resolve these issues.

So, for now, I'm going to deny the motion to lift the stay. Parties should meet and confer and issue a form of order under certification of counsel.

Are there any questions?

MR. WENDER: Your Honor, the Committee would just ask to be a party to that mediation, as well.

THE COURT: Absolutely, yes. Absolutely.

MR. WENDER: Thank you.

THE COURT: Anything else?

MR. GLUECKSTEIN: Thank you very much, Your Honor. That is clear to the debtors.

The only other thing just to note before we close, there was on the agenda today, which I think flows well from Your Honor's comments, is an initial scheduling conference in the adversary proceeding between the debtors and FTX Digital Markets. We have been talking with counsel for FTX Digital. I believe we have agreed on a form of a schedule to move that litigation forward. I understand we have a pending motion to dismiss, and, of course, Your Honor's comments this afternoon.

So, think for purposes of the conference, I think the update to the Court is that we intend to submit that scheduling order for Your Honor's consideration. That scheduling order is designed, from the debtors' perspective, to ensure that we get to a trial on any of the issues that might need to be tried related to those issues, consistent with our confirmation schedule that Mr. Dietderich laid out yesterday, and I think we have a schedule to do that.

THE COURT: Okay. Excellent.

I don't know if my comments make any difference in what that schedule is going to look like, but you can resubmit it under COC.

MR. GLUECKSTEIN: Thank you, Your Honor.

MR. WENDER: And, Your Honor, just for clarification with the Committee asking, as well, with the Ad Hoc Committee now, at least attempting to, could we at least attempt to participate in that mediation, at least as an observation party, at a minimum?

THE COURT: I think as an observation party, that's a good idea, because, obviously, as I've said, you know, the creditors might want to participate and it's going to depend on what happens in each of the two courts.

MR. WENDER: Thank you, Your Honor.

MR. SABIN: Your Honor, Jeff Sabin from Venable, on behalf of --

THE COURT: Yes, you can participate, poo.

MR. SABIN: Thank you so much.

(Laughter)

THE COURT: Okay. Well, let me throw this out, too, is there any -- are we at a stage now where a mediation of the ultimate issues is possible or do the parties need to engage in some discovery first?

MR. GLUECKSTEIN: Your Honor, I think we should -- I should probably confer with counsel for the JPLs. The

debtors have been talking, trying to starting the conversation with the JPLs. We're obviously very interested, as Mr. Dietderich outlined yesterday, in moving the plan process forward and having an ultimate resolution that would resolve these issues in that context. We've started that discussion, early stages. We would love to fold the JPLs into that plan process.

To the extent we need to resolve the litigation issues raised in the adversary proceeding, you know, as I said, I think we are certainly hopeful to move that forward expeditiously, but we probably should confer on, you know, the scope of mediation. That might make some sense.

THE COURT: I would appreciate the parties doing that. Because I think, in my view -- I mean, you can put forward a proposed plan, but nothing's going to happen until we know the resolution of who owns which assets. I mean, you can't confirm the plan until we know whose assets they are.

So that's -- it seems like the front-running issue here is the litigation; am I wrong?

MR. GLUECKSTEIN: Well, I mean, conceptually, yes, Your Honor, but there are certainly scenarios where if we were -- and this is just a hypothetical, obviously, at this point -- there are certainly scenarios where if the debtors and Digital Markets, as you said at the outset, because it total leads to getting assets to customers, could reach an

understanding of how to make that happen, some of those questions might become less important if it was on a consensual basis, right.

So there would certainly be ways to distribute assets in both estates, potentially, through a plan process in a consensual manner, but it's too early to put specifics on that. But I think the premise of Your Honor from the debtors' perspective is absent an agreement with the JPLs on how to administer all of the collective assets, then we would obviously need to decide those issues.

THE COURT: Right.

MR. GLUECKSTEIN: But if we had an agreement on that question, we might not need to.

THE COURT: Right. That's what I'm trying to get at: Get an agreement on the issue.

MR. ZAKIA: Your Honor, Jason Zakia of White & Case for the JPLs.

I actually agree with Mr. Glueckstein, not on too much, but on a few things, one of which is, I think Your Honor's suggestion concerning the scope of mediation is constructive. Obviously, we have to consult with our clients in order to give you an official answer, but I think that's something we should consult about.

And we absolutely agree with Your Honor's comment that, you know, absent consensual resolution, resolution of

these issues, regardless of what court it's going to be resolved in, which is a separate question, but resolution of who owns what assets is going to be an issue that has to be resolved before, you know, any plan process can be concluded.

So, I would -- we'll work with the debtors on the order; hopefully, we won't need your help on that one, on a form of order. And I'll also consult about the scope of the mediation and report back to the Court on whether we can have an agreed scope on that.

THE COURT: Okay. Excellent. Thank you.

MR. ZAKIA: Thank you very much.

THE COURT: Anything else for today?

MS. SARKESSIAN: Your Honor, on the -- Your Honor, I'm sorry, it's been a long day -- on the two sealing motions, should counsel a submit a proposed order under COC?

THE COURT: Yes. Yes, please.

MS. SARKESSIAN: Thank you -- or two proposed orders, I guess.

THE COURT: Two orders, yes.

Okay. Anything else?

UNIDENTIFIED SPEAKER: No, Your Honor.

THE COURT: Okay. Thank you all very much.

We're adjourned.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 2:45 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling June 10, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams June 10, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand June 10, 2023
Coleen Rand, CET-341
Certified Court Transcriptionist
For Reliable

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	Re: Docket No. 1192

ORDER DENYING MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-US LAW AND OTHER ISSUES

Upon the motion (the "**Motion**")[2] of Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators ("**JPLs**") of FTX Digital Markets Ltd., seeking (i) a determination that the automatic stay does not apply to the filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the "**Bahamas Court**") or in the alternative (ii) relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order*

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in the chapter 11 cases, a complete list of the debtors (the "**Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Chapter 11 Debtors' proposed claims and noticing agent at https://cases.ra.kroll.com/FTX. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson's Commercial Complex, Friars Hill Road, St. John's, Antigua and Barbuda.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having authority to enter a final order consistent with Article III of the United States Constitution; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules, and it appearing that no other or further notice need be provided; and a hearing having been held on June 8 and 9, 2023 to consider the relief requested in the Motion (the "**Hearing**"); and upon the record of the Hearing and all proceedings before the Court; and after due deliberation thereon; and after the Parties having conferred to appoint a mediator to administer a non-binding mediation process between the Parties to potentially resolve disputes and claims between the JPLs and the Debtors (the "**Mediation**"),

IT IS HEREBY ORDERED ADJUDGED, AND DECREED THAT:

1. The Motion is denied for the reasons set forth on the record of the Hearing.

2. The Hon. Judith Fitzgerald (Ret.) is hereby authorized and appointed to serve as mediator (the "**Mediator**") to conduct the Mediation in accordance with this Order.

3. The Mediation shall be governed by Rule 9019-5(d) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware ("**Local Delaware Bankruptcy Rule 9019-5(d)**"). The Parties shall meet and confer with the Mediator to establish procedures and timing for the Mediation.

4. The Official Committee of Unsecured Creditors shall be a party to the Mediation.

5. The Customer Adversary Plaintiffs, the Ad Hoc Customer Group, and the Ad Hoc Committee of Non-US Customers of FTX.com shall each be an observation party to the Mediation.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to this Order.

Dated: July 20th, 2023
Wilmington, Delaware

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMERCIAL DIVISION

2022/COM/com

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

SECURITIES COMMISSION OF THE BAHAMAS

Plaintiff

AND

FTX DIGITAL MARKETS LTD.

Defendant

ORDER

Before The Honourable Justice Loren Klein
Dated the 12th day of November, A.D., 2022

UPON AN URGENT APPLICATION, made orally and ex parte, on behalf of The Securities Commission of The Bahamas ("the Application").

AND UPON HEARING Mr. Robert K. Adams, KC and Edward J. Marshall II of Counsel for The Securities Commission of The Bahamas

AND THE COURT, being satisfied by Counsel appearing for The Securities Commission that the Provisional Liquidator of the FTX Digital Markets Ltd had been notified of the Application

AND UPON THE UNDERTAKING of Counsel for the Applicant to file herein an Originating Summons and Affidavit in support thereof on Monday, 14 November 2022

IT IS HEREBY ORDERED THAT The Securities Commission of The Bahamas, as regulator, do take the action of directing FTX Digital Markets Ltd, whether by its Provisional Liquidator or otherwise, to transfer forthwith to an account and/or digital wallet(s) established and maintained by The Securities Commission of The Bahamas all of the digital assets on the FTX.com platform within the possession, custody and/or under the control of FTX Digital Markets Ltd, its officers, directors, employees and/or agents, including any digital assets held upon trust by FTX Digital Markets Ltd, on the grounds that such action is necessary to protect the interests of clients and creditors of FTX Digital Markets Ltd and otherwise in the public interest to do so

AND IT IS ORDERED that the costs of and occasioned by this application are to be costs in the cause.

THIS ORDER shall remain in force until varied or discharged upon application being made on two clear days' notice **AND** the parties shall be at liberty to apply.

BY ORDER OF THE COURT

REGISTRAR

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD. (A Registered Digital Asset Business)

SECURITIES COMMISSION OF THE BAHAMAS

Plaintiff

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Defendant

ORDER

2022/COM/com

Delaney Partners
DELANEY PARTNERS
Lyford Manor (West Bldg)
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New Providence, The Bahamas

Attorneys for the Plaintiff

RKA/EJM/sjs

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
FTX TRADING LTD., *et al.*,[1]	:	Case No. 22-11068 (JTD)
Debtors.	:	(Jointly Administered)

JOINT CHAPTER 11 PLAN OF REORGANIZATION OF FTX TRADING LTD. AND ITS DEBTOR AFFILIATES

Andrew G. Dietderich (admitted *pro hac vice*)
James L. Bromley (admitted *pro hac vice*)
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Counsel for the Debtors and Debtors-in-Possession

Dated: December 16, 2023

[1] The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification number are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson's Commercial Complex, Friars Hill Road, St. John's, Antigua and Barbuda.

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1. INTRODUCTION

1.1. Introduction

FTX Trading Ltd. ("FTX Trading") and its affiliated debtors and debtors-in-possession in the above-captioned Chapter 11 Cases (collectively, the "Debtors"), propose the following joint plan of reorganization (including the Plan Supplement and all other exhibits and schedules thereto, the "Plan") pursuant to section 1121(a) of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to an order entered by the Court on November 22, 2022 [D.I. 128]. Each Debtor is a proponent of the Plan for purposes of section 1129 of the Bankruptcy Code.

1.2. Dismissed Chapter 11 Cases and Excluded Entities

The following Entities were Debtors as of the Petition Date but are no longer Debtors and are not included in the Plan:

(a) the chapter 11 case of FTX Turkey Teknoloji ve Ticaret Anonim Şirketi ("FTX Turkey") was dismissed on February 13, 2023 [D.I. 711];

(b) the chapter 11 case of SNG Investments Yatırım ve Danışmanlık Anonim Şirketi ("SNG Investments") was dismissed on February 13, 2023 [D.I. 711];

(c) the chapter 11 case of FTX Exchange FZE was dismissed on August 18, 2023 [D.I. 2207];

(d) the chapter 11 case of Liquid Financial USA, Inc. was dismissed on November 13, 2023 [D.I. 3739];

(e) the chapter 11 case of LiquidEX, LLC was dismissed on November 13, 2023 [D.I. 3739];

(f) the chapter 11 case of Zubr Exchange Limited was dismissed on November 13, 2023 [D.I. 3739]; and

(g) the chapter 11 case of DAAG Trading, DMCC was dismissed on November 13, 2023 [D.I. 3739].

The Debtors may determine, prior to or in connection with Confirmation of the Plan, to exclude any other Debtor from the Plan for any reason, including in the event that regulatory, tax or other Claims presented against such Debtor render the continued inclusion of such Debtor in the Plan impractical or adverse to the interests of other Debtors. Such Debtors and the Entities listed above shall constitute "Excluded Entities" for purposes of the Plan and shall be excluded from the Plan for all purposes, and the assets and liabilities of the Excluded Entities shall not be transferred to, or vest in, any of the Wind Down Entities.

2. DEFINITIONS AND RULES OF INTERPRETATION

2.1. Defined Terms

Except as otherwise provided herein, each capitalized term used in the Plan shall have the meaning set forth below.

2.1.1 "503(b)(9) Claim" means a Claim arising under section 503(b)(9) of the Bankruptcy Code for which a Proof of Claim was filed on or before the Non-Customer Bar Date.

2.1.2 "Administrative Claim" means any Claim for costs and expenses of administration of the Chapter 11 Cases of a kind specified under section 503(b) of the Bankruptcy Code arising on or prior to the Effective Date and entitled to priority pursuant to sections 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including Professional Claims; *provided* that Administrative Claims shall not include 503(b)(9) Claims.

2.1.3 "Administrative Claim Bar Date" means: (a) 4:00 p.m. (Eastern Time) on the 30th day after the Effective Date or (b) such other date established by order of the Bankruptcy Court by which Proofs of Claim in respect of Administrative Claims must be filed (other than Professional Claims).

2.1.4 "Affiliate" has the meaning set forth in section 101(2) of the Bankruptcy Code.

2.1.5 "Alameda U.S. Customer Claim" means a U.S. Customer Entitlement Claim in the amount of $[•].[2]

2.1.6 "Allowed" means, with respect to any Claim or Interest, that the amount, priority and/or classification of such Claim or Interest has been:

(a) allowed by the Plan or the Confirmation Order, or by Final Order of the Bankruptcy Court;

(b) allowed or stipulated in writing (i) prior to the Effective Date, by the Debtors in accordance with authority granted by an order of the Bankruptcy Court or (ii) on or after the Effective Date, by the Plan Administrator;

(c) listed in the Schedules as not disputed, not contingent, not unliquidated with respect to amount, secured status or priority and (i) no Proof of Claim in an amount greater than the amount set forth in the Schedules has been filed, (ii) no objection to allowance, priority or classification, request for estimation, motion to deem the Schedules amended or other challenge has been filed

[2] Note to Draft: This value will correspond to the aggregate claim of both Paper Bird Inc. and Alameda Research Ltd's position on the FTX.US Exchange.

prior to the applicable deadlines set forth in the Plan, the Bankruptcy Code, the Bankruptcy Rules or as determined by the Bankruptcy Court, (iii) such Claim is not otherwise subject to disallowance under section 502(d) or bifurcation under section 506(a) of the Bankruptcy Code, and (iv) such Claim is not an Unverified Customer Entitlement Claim;

(d) evidenced by a valid and timely filed Proof of Claim and (i) no objection to allowance, priority or classification, request for estimation or other challenge has been filed prior to the applicable deadlines set forth in the Plan, the Bankruptcy Code, the Bankruptcy Rules or as determined by the Bankruptcy Court, (ii) such Claim is not otherwise subject to disallowance under section 502(d) or bifurcation under section 506(a) of the Bankruptcy Code, and (iii) such Claim is not an Unverified Customer Entitlement Claim;

(e) in the case of an Other Administrative Claim, subject to a request for payment timely filed and served in accordance with Section 3.1 and no objection to such Claim has been timely filed and served pursuant to Article 3; or

(f) in the case of any Professional Claim, allowed by an order of the Bankruptcy Court.

2.1.7 "Available NFT" means an NFT that is in the custody of a Debtor on the Effective Date.

2.1.8 "Avoidance Actions" means any and all Causes of Action to subordinate, avoid or recover a transfer of property or an obligation incurred by any of the Debtors pursuant to any applicable section of the Bankruptcy Code, including, but not limited to, sections 105(a), 502(d), 510, 542, 544, 545, 547, 548, 549, 550, 551, 553(b) and 724(a) of the Bankruptcy Code, or under any similar or related local, state, federal or foreign statutes or common law.

2.1.9 "AWS Wallets" means Digital Asset wallets stored by the Debtors at Amazon Web Services.

2.1.10 "Bahamian Subsidiaries" means FTX DM and FTX Bahamas PropCo.

2.1.11 "Ballots" means the ballots accompanying the Disclosure Statement upon which certain Holders of Impaired Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the Solicitation Procedures Order, and which must be actually received on or before the Voting Deadline.

2.1.12 "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*.

2.1.13 "Bankruptcy Court" or "Court" means the United States Bankruptcy Court for the District of Delaware.

2.1.14 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to these Chapter 11 Cases, and the general, local and chambers rules of the Bankruptcy Court.

2.1.15 "Business Day" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

2.1.16 "Cancelled Intercompany Claim" means any Intercompany Claim other than (a) any Separate Subsidiary Intercompany Claim, (b) any Separate Subsidiary Subordinated Intercompany Claim, (c) the Dotcom Intercompany Shortfall Claim, (d) the U.S. Intercompany Shortfall Claim and (e) the Alameda U.S. Customer Claim.

2.1.17 "Case Expenses" has the meaning set forth in Section 3.6.

2.1.18 "Cash" means the legal tender of the United States of America or the equivalents thereof, including bank deposits, checks and other similar items.

2.1.19 "Cause of Action" means any action, claim, cause of action, controversy, demand, right, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, remedy, power, privilege, license and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Causes of Action also include: (a) any right of setoff, counterclaim or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or interests; (c) any claim pursuant to section 362 of the Bankruptcy Code; (d) any Avoidance Action; (e) any claim or defense, including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; (f) any state law fraudulent transfer claim; and (g) any claim against Persons or Entities that are not released under the Plan, including the Preserved Potential Claims, and such Entity's directors, officers, employees, agents, Affiliates, parents, subsidiaries, predecessors, successors, heirs, executors and assigns, attorneys, financial advisors, restructuring advisors, investment bankers, accountants and other professionals or representatives when acting in any such capacities.

2.1.20 "Certificate" means any instrument evidencing a Claim or an Equity Interest.

2.1.21 "Chapter 11 Cases" means (a) when used with reference to a particular Debtor, the chapter 11 case pending for such Debtor and (b) when used with reference to all Debtors, the jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court; *provided* that the Chapter 11 Cases shall not include (i) the chapter 11 case of any Excluded Entity, (ii) any chapter 11 case that has been closed pursuant to Section 13.13 or (iii) the chapter 11 case of Debtor Emergent Fidelity Technologies Ltd.

2.1.22 "Claim" means any claim against a Debtor as defined in section 101(5) of the Bankruptcy Code.

2.1.23 "Claims Bar Date" means, as applicable, (a) the Non-Customer Bar Date; (b) the Customer Bar Date; (c) the Governmental Bar Date; or (d) such other date established by order of the Bankruptcy Court by which Proofs of Claim must have been filed.

2.1.24 "Claims Objection Deadline" means: (a) the date that is the later of (i) one year after the Effective Date or (ii) as to Proofs of Claim filed after the applicable Claims Bar Date, the 60th day after a Final Order is entered by the Bankruptcy Court deeming the late-filed Proof of Claim to be treated as timely filed or (b) such later date as may be established by order of the Bankruptcy Court upon a motion by the Plan Administrator, with notice only to those parties entitled to receive notice pursuant to Bankruptcy Rule 2002.

2.1.25 "Claims Register" means the official register of Claims maintained by the Notice and Claims Agent.

2.1.26 "Class" means a class of Claims or Interests as set forth in Article 4 pursuant to section 1122(a) of the Bankruptcy Code.

2.1.27 "Confirmation" means the entry of the Confirmation Order on the docket of these Chapter 11 Cases.

2.1.28 "Confirmation Date" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of these Chapter 11 Cases.

2.1.29 "Confirmation Hearing" means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

2.1.30 "Confirmation Order" means the order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

2.1.31 "Consolidated Debtors" means all Debtors other than (a) the Separate Subsidiaries and (b) the Excluded Entities.

2.1.32 "Consolidated Wind Down Trust" has the meaning set forth in Section 5.5.

2.1.33 "Consummation" means the occurrence of the Effective Date.

2.1.34 "Control Persons" means (a) Samuel Bankman-Fried, Zixiao "Gary" Wang, Nishad Singh and Caroline Ellison; (b) any Person with a familial relationship with any of the individuals listed in clause (a); or (c) any other Person or Entity designated by the Debtors in the Plan Supplement as a Control Person.

2.1.35 "Customer" means a Person or Entity that maintained an account on an FTX Exchange.

2.1.36 "Customer Bar Date" means 4:00 p.m. (Eastern Time) on September 29, 2023.

2.1.37 "Customer Entitlement Claim" means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, under the Bankruptcy Code, federal or state law, rule or regulation, common law or otherwise) held by any Person or Entity against any of the Debtors that compensates the Holder of such Claim for the value as of the Petition Date of Cash or Digital Assets held by such Person or Entity in an account on any FTX Exchange.

2.1.38 "Customer Preference Action" means a Dotcom Customer Preference Action or a U.S. Customer Preference Action.

2.1.39 "Customer Preference Settlement" means the settlement of Customer Preference Actions that are not Excluded Customer Preference Actions between the Debtors and each Qualifying Customer Preference Settlement Participant.

2.1.40 "Customer Preference Settlement Amount" means, for any Customer Entitlement Claim, the Net Preference Exposure in respect of such Customer Entitlement Claim *multiplied* by 15 percent; *provided* that if such Net Preference Exposure is zero, negative or less than $250,000, the Customer Preference Settlement Amount shall be deemed to be zero.

2.1.41 "Customer Preference Settlement Look Back Period" means the period beginning at 12:01 a.m. ET on November 2, 2022, and ending at 10:00 a.m. ET on November 11, 2022.

2.1.42 "Customer Preference Settlement Offer" means the offer made by the Debtors to Holders of Customer Entitlement Claims to settle Customer Preference Actions as set forth in the Ballots.

2.1.43 "D&O Policy" means any insurance policy and all agreements, documents or instruments relating thereto, issued to any of the Debtors covering defensive costs and other liabilities arising out of claims against current or former directors, members, trustees and officers of the Debtors, other than commercial general liability policies and cyber liability policies.

2.1.44 "Debtors" has the meaning set forth in Section 1.1; *provided* that Debtors shall not include (a) any Excluded Entity, (b) any Entity whose chapter 11 case has been closed pursuant to Section 13.13 or (c) Debtor Emergent Fidelity Technologies Ltd.

2.1.45 "*De Minimis* Claim" means any Claim in an amount equal to or less than $10.00.

2.1.46 "Digital Asset" means a DLT Digital Asset or a Pre-Launch Cryptocurrency.

2.1.47 "Digital Assets Conversion Table" means the conversion table attached as Exhibit [•] to the Digital Assets Estimation Order and Exhibit to the Disclosure Statement.

2.1.48 "Digital Assets Estimation Order" means the [•] [D.I. [•]].

2.1.49 "Disclosure Statement" means the disclosure statement for the Plan, as approved by the Bankruptcy Court pursuant to the Solicitation Procedures Order, including all exhibits and schedules thereto and references therein that relate to the Plan.

2.1.50 "Disputed Claim" means any Claim that has not been Allowed.

2.1.51 "Disputed Claims Reserve" means a reserve, if any, in an amount determined by the Plan Administrator on account of Disputed Claims that may be subsequently Allowed after the Effective Date.

2.1.52 "Distribution" means a distribution of property pursuant to the Plan, to take place as provided for herein, and "Distribute" shall have a correlative meaning.

2.1.53 "Distribution Agent" means one or more Entities chosen by the Debtors or the Plan Administrator, which may include the Notice and Claims Agent, to make any Distributions at the direction of the Plan Administrator.

2.1.54 "Distribution Date" means the Initial Distribution Date and each Subsequent Distribution Date.

2.1.55 "Distribution Record Date" means a date determined by the Plan Administrator, from time to time, in his or her reasonable discretion and in accordance with the Plan Administration Agreement, to make any Distributions under the Plan.

2.1.56 "DLT Digital Asset" means any digital representation of value or units that is issued or transferable using distributed ledger or blockchain technology, including Stablecoins, cryptocurrency and NFTs.

2.1.57 "Dotcom Convenience Claim" means (a) any Dotcom Customer Entitlement Claim Allowed in an amount equal to or less than $10,000 or (b) any Dotcom Customer Entitlement Claim Allowed in an amount greater than $10,000 but that is reduced to an amount equal to or less than $10,000 by an irrevocable written election of the Holder of such Dotcom Customer Entitlement Claim made on a properly executed and delivered Ballot; *provided* that where any portion of a Dotcom Customer Entitlement Claim has been transferred or subdivided, any transferred or subdivided portion shall continue to be treated together with the entire initial Dotcom Customer Entitlement Claim for purposes of determining whether any portion of such Dotcom Customer Entitlement Claim qualifies as a Dotcom Convenience Claim.

2.1.58 "Dotcom Customer Preference Action" means any and all Causes of Action to avoid any preferential payments or transfers of property from the FTX.com Exchange pursuant to section 547 of the Bankruptcy Code and any recovery action related

thereto under section 550 of the Bankruptcy Code, or under any similar or related local, state, federal or foreign statutes or common law.

2.1.59 "Dotcom Customer Entitlement Claim" means (a) any Customer Entitlement Claim against the FTX.com Exchange and (b) any Preference Replacement Claim relating to a Dotcom Customer Preference Action that arises from a judgment entered in favor of a Debtor against a Customer of the FTX.com Exchange or any of such Customer's successors or assigns; *provided* that Dotcom Customer Entitlement Claims shall not include FTT Customer Entitlement Claims, NFT Customer Entitlement Claims, Dotcom Convenience Claims or *De Minimis* Claims.

2.1.60 "Dotcom Customer Priority Assets" means collectively:

(a) all fiat currency in segregated accounts designated by the Debtors as accounts for the benefit of customers associated with the FTX.com Exchange held by the Debtors on the Petition Date;

(b) all Digital Assets (other than Available NFTs) held by the Debtors and identified by the Debtors as held for customers in FTX.com AWS Wallets on the Petition Date and all proceeds relating to the sale, disposition or other monetization thereof;

(c) all proceeds relating to the recovery of Digital Assets subject to the Hacking Incident recovered by the Debtors to the extent that such proceeds are in respect of Digital Assets held in FTX.com AWS Wallets before, on or after the Petition Date;

(d) all proceeds from any Claim or Cause of Action against any Customer of the FTX.com Exchange or any of such Customer's successors or assigns and Dotcom Customer Preference Actions, including any proceeds from any Customer Preference Settlement in respect of a Dotcom Customer Preference Action;

(e) all proceeds from recoveries from the Bahamian Subsidiaries, of any sort, whether from the Debtors' equity interest in, or from claims against, such Bahamian Subsidiaries, including (1) the residual proceeds, if any, from the sale, disposition or other monetization of property of FTX Bahamas PropCo in accordance with the waterfall priority set forth in Section 4.2.4 and (2) proceeds, if any, from the FTX DM Global Settlement Agreement;

(f) all proceeds from the transfer or sale of property of the Debtors relating to the FTX.com Exchange, including any proceeds from the subsequent disposition by the Debtors or the Wind Down Entities of non-Cash consideration received in connection with any such transfer or sale; and

(g) the Dotcom Intercompany Shortfall Claim.

2.1.61 "Dotcom Exchange Shortfall Amount" means $[•].[3]

2.1.62 "Dotcom Intercompany Shortfall Claim" means a Claim against the General Pool subject to the waterfall priorities set forth in Section 4.2 in an amount equal to the Dotcom Exchange Shortfall Amount.

2.1.63 "Effective Date" means, following the Confirmation Date, 12:01 a.m. prevailing Eastern Time on a Business Day selected by the Debtors, on which all conditions to the occurrence of the Effective Date set forth in Section 9.1 are satisfied or waived in accordance with the Plan.

2.1.64 "Election Form" means the election form regarding the Voluntary Release by Holders of Claims and Interests provided to Holders of Claims or Interests who are not entitled to vote on the Plan and which must be actually received on or before the Voting Deadline.

2.1.65 "Entity" has the meaning set forth in section 101(15) of the Bankruptcy Code.

2.1.66 "Equitably Subordinated Claim" means any Claim of any kind or nature whatsoever (whether arising in law or equity, contract or tort, under the Bankruptcy Code, federal or state law, rule or regulation, common law or otherwise) held by any Control Person against any of the Debtors as of the Petition Date.

2.1.67 "Equity Interest" means any Equity Security, including any issued, unissued, authorized or outstanding share of common stock, preferred stock or other instrument evidencing an ownership interest in a Debtor, whether or not transferable, and any option, warrant or right, contractual or otherwise, to acquire any such interest in a Debtor that existed immediately prior to the Effective Date; *provided* that Equity Interest does not include any Intercompany Interest.

2.1.68 "Equity Security" means an equity security as defined in section 101(16) of the Bankruptcy Code.

2.1.69 "Estate" means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and/or as established by order of the Bankruptcy Court.

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[3] Note to Draft: This value will represent the historical shortfall in the accounts associated with the FTX.com Exchange at the time of commencement of the Chapter 11 Cases, and will be set as the Debtors' estimate of the difference as of the Petition Date between (a) the aggregate amount of Dotcom Customer Entitlement Claims (excluding Dotcom Customer Entitlement Claims held by certain Debtors, including but not limited to Quoine PTE Ltd (Liquid), Japan KK, and the FTX EU Ltd.) and (b) the aggregate fair market value of (i) fiat currency in segregated accounts, (ii) Digital Assets in FTX.com AWS Wallets (other than NFTs and FTT) and (iii) Digital Assets subject to the Hacking Incident. In the event that Digital Assets subject to Hacking Incidents are recovered after the Petition Date, such recovered amounts will reduce the Dotcom Exchange Shortfall Amount.

2.1.70 "Exchange Rate" means the closing exchange rate on the Petition Date, as published by *The Wall Street Journal*.

2.1.71 "Excluded Customer Preference Action" means any Customer Preference Action designated by the Debtors as an Excluded Customer Preference Action subject to Section 5.3.3.

2.1.72 "Excluded Entity" means any Entity listed in Section 1.2 and any other Entity that was a Debtor as of the Petition Date but which has been excluded from the Plan prior to or in connection with Confirmation of the Plan.

2.1.73 "Excluded Party" means any (a) Control Person, (b) former director, officer or employee of any Debtor not incumbent as of the Confirmation Date, or (c) other Entity associated with the Debtors that is identified by the Debtors in the Plan Supplement as an Excluded Party.

2.1.74 "Exculpated Parties" means (a) the Debtors, (b) the Official Committee and its current members, in their capacities as such, (c) the Fee Examiner, and (d) with respect to each Entity named in (a) through (c), any Person or Entity to the extent acting as a director, officer, employee, attorney, financial advisor, restructuring advisor, investment banker, accountant and other professional or representative of such Entity in each case, provided that such Person is acting in such capacity as of the Confirmation Date, and solely with respect to the period from and after the Petition Date. Notwithstanding anything to the contrary in the Plan or the Plan Supplement, no Excluded Party shall be an Exculpated Party.

2.1.75 "Executory Contract" means a contract to which one or more of the Debtors is a party and that such Debtor may assume or reject under section 365 or 1123 of the Bankruptcy Code.

2.1.76 "Federal Judgment Rate" means the federal judgment rate in effect pursuant to 28 U.S.C. § 1961 as of the Petition Date, compounded annually.

2.1.77 "Fee Examiner" means Katherine Stadler, as Fee Examiner appointed under the *Order (I) Appointing Fee Examiner and (II) Establishing Procedures for Consideration of Requested Fee Compensation and Reimbursement of Expenses* [D.I. 834].

2.1.78 "Final Distribution" has the meaning set forth in Section 7.2.2.

2.1.79 "Final Order" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, vacated or amended, and as to which the time to appeal, seek *certiorari* or move for a new trial, stay, re-argument or rehearing has expired and no appeal, petition for *certiorari* or motion for a new trial, stay, re-argument or rehearing has been timely filed, or as to which any appeal that has been taken, any petition for *certiorari*, or motion for a new trial, stay, re-argument or rehearing that has been or may be filed shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, stay, re-argument or rehearing shall have expired, as a result of which such order shall have become final in

accordance with Bankruptcy Rule 8002; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 9024, may be filed relating to an order shall not by itself cause such order to not be a Final Order.

2.1.80 "FTT" means the token native to the FTX.com Exchange.

2.1.81 "FTT Customer Entitlement Claim" means a Customer Entitlement Claim in respect of an FTT.

2.1.82 "FTT Interest" means any FTT Customer Entitlement Claim, Claim or Interest, if any, of any kind or nature (whether arising in law or equity, contract or tort, under the Bankruptcy Code, federal or state law, rule or regulation, common law or otherwise) held by any Person or Entity in the capacity as a holder of FTT that is not a Section 510(b) FTT Claim.

2.1.83 "FTX Australia" means FTX Australia Pty Ltd and FTX Express Pty Ltd.

2.1.84 "FTX Bahamas PropCo" means FTX Property Holdings Ltd.

2.1.85 "FTX DM" means FTX Digital Markets Ltd.

2.1.86 "FTX DM Global Settlement Agreement" means the Global Settlement Agreement, dated as of [•], between the Debtors and FTX DM.

2.1.87 "FTX DM Liquidation" means FTX DM's liquidation or winding up proceeding in The Bahamas.

2.1.88 "FTX Exchange" means any exchange or trading platform operated by a Debtor as of the Petition Date.

2.1.89 "FTX Trading" has the meaning set forth in Article 1.

2.1.90 "FTX Turkey" has the meaning set forth in Section 1.2(a).

2.1.91 "FTX.com AWS Wallets" means the AWS Wallets associated with FTX.com Exchange.

2.1.92 "FTX.com Exchange" means the FTX.com trading platform.

2.1.93 "FTX.US AWS Wallets" means the AWS Wallets associated with the FTX.US Exchange.

2.1.94 "FTX.US Exchange" means the FTX.US trading platform.

2.1.95 "General Administrative Claim" means an Administrative Claim other than a Professional Claim.

2.1.96 "General Convenience Claim" means (a) any General Unsecured Claim Allowed in an amount equal to or less than $10,000 or (b) any General Unsecured Claim

Allowed in an amount greater than $10,000 but that is reduced to an amount equal to or less than $10,000 by an irrevocable written election of the Holder of such General Unsecured Claim made on a properly executed and delivered Ballot; *provided* that where any portion of a General Unsecured Claim has been transferred or subdivided, any transferred or subdivided portion shall continue to be treated together with the entire initial General Unsecured Claim for purposes of determining whether any portion of such General Unsecured Claim qualifies as a General Convenience Claim.

2.1.97 "General Pool" means collectively,

(a) all fiat and Digital Assets held by the Debtors that (i) are not Dotcom Customer Priority Assets or U.S. Customer Priority Assets or (ii) were not allocated to a Separate Subsidiary;

(b) all excess distributable value of any non-Debtor subsidiary (other than FTX DM) after satisfaction of all claims against such non-Debtor subsidiary;

(c) all excess distributable value of the Separate Subsidiaries after satisfaction of all (i) Allowed Separate Subsidiary Claims and (ii) Allowed Separate Subsidiary Subordinated Intercompany Claims in accordance with the waterfall priority set forth in Section 4.2.5;

(d) all proceeds from all Avoidance Actions and litigation Claims of any Debtor other than the Dotcom Customer Preference Actions and the U.S. Customer Preference Actions;

(e) all proceeds from the sale, disposition or other monetization of other property of the Debtors other than the Bahamian Subsidiaries, the FTX.com Exchange and the FTX.US Exchange;

(f) the Alameda U.S. Customer Claim;

(g) 100 percent of the residual interest in the Dotcom Customer Priority Assets after all Dotcom Customer Entitlement Claims are satisfied in full;

(h) 100 percent of the residual interest in the U.S. Customer Priority Assets after all U.S. Customer Entitlement Claims are satisfied in full; and

(i) all other property of the Debtors or the Wind Down Entities, other than any Dotcom Customer Priority Asset or the U.S. Customer Priority Asset.

2.1.98 "General Unsecured Claim" means any Claim that is not a (a) Administrative Claim, (b) 503(b)(9) Claim, (c) Priority Tax Claim, (d) Other Priority

Claim, (e) Secured Claim, (f) Separate Subsidiary Claim, (g) Dotcom Customer Entitlement Claim, (h) U.S. Customer Entitlement Claim, (i) NFT Customer Entitlement Claim, (j) Dotcom Convenience Claim, (k) U.S. Convenience Claim, (l) General Convenience Claim, (m) PropCo Ordinary Course Claim, (n) PropCo DM Claim, (o) PropCo General Unsecured Claim, ((p) Intercompany Claim, (q) Subordinated Claim, (r) Equitably Subordinated Claim, (s) FTT Interest, (t) Section 510(b) Claim, (u) *De Minimis* Claim, (v) Dotcom Intercompany Shortfall Claim, (w) U.S. Intercompany Shortfall Claim, or (x) Alameda U.S. Customer Claim.

2.1.99 "Global Settlement" has the meaning set forth in Section 5.2.

2.1.100 "Governmental Bar Date" means 4:00 p.m. (Eastern Time) on September 29, 2023.

2.1.101 "Governmental Unit" means governmental unit as defined in section 101(27) of the Bankruptcy Code.

2.1.102 "Hacking Incident" means the electronic attack against the Debtors and the FTX Exchanges in November 2022 that commenced before the Petition Date.[4]

2.1.103 "Holder" means a Person or an Entity holding a Claim against or an Interest in any of the Debtors.

2.1.104 "Impaired" means "impaired" within the meaning of section 1124 of the Bankruptcy Code.

2.1.105 "Initial Distribution Date" means the date determined by the Plan Administrator, in his or her reasonable discretion and in accordance with the Plan Administration Agreement, to commence Distributions under the Plan.

2.1.106 "Insider" has the meaning set forth in section 101(31) of the Bankruptcy Code, and includes any non-statutory insiders of the Debtors and Affiliates of the Debtors, including, among others, Samuel Bankman-Fried, Zixiao "Gary" Wang, Nishad Singh and Caroline Ellison.

2.1.107 "Intercompany Claim" means any Claim of whatever nature and arising at whatever time held by a Debtor against another Debtor.

2.1.108 "Intercompany Interest" means any Equity Security, including any issued or unissued share of common stock, preferred stock or other instrument, evidencing an ownership interest in a Debtor other than a Excluded Entity or a subsidiary held by another Debtor.

[4] Note to Draft: The Debtors have assessed the aggregate fair market value of the Digital Assets subject to the Hacking Incidents to be $0.00, as the Debtors did not have control of these assets as of the commencement of these Chapter 11 Cases, and the security breach resulting in the electronic attack began prepetition.

2.1.109 "Interest" means any Equity Interest or Intercompany Interest.

2.1.110 "IRS" means the Internal Revenue Service.

2.1.111 "KYC Information" means the know-your-customer information requested by the Debtors.

2.1.112 "Lien" means a lien as defined in section 101(37) of the Bankruptcy Code.

2.1.113 "Net Preference Exposure" means, for any Customer of the FTX.com Exchange or the FTX.US Exchange, the amount expressed in U.S. Dollars equal to (a) the net aggregate market value of all withdrawals by such Customer from the FTX.com Exchange or the FTX.US Exchange, as applicable, during the Customer Preference Settlement Look Back Period *less* (b) the net aggregate market value of all deposits by such Customer on the FTX.com Exchange or the FTX.US Exchange, as applicable, during the Customer Preference Settlement Look Back Period, in each case as determined by the Debtors based on prices as of the applicable transfer.

2.1.114 "NFT" means a non-fungible token.

2.1.115 "NFT Customer Entitlement Claim" means a Customer Entitlement Claim for the return of an Available NFT.

2.1.116 "Non-Customer Bar Date" means 4:00 p.m. (Eastern Time) on June 30, 2023.

2.1.117 "Notice and Claims Agent" means Kroll Restructuring Administration LLC, located at 55 East 52nd Street, 17th Floor, New York, NY 10055, retained and approved by the Bankruptcy Court as the Debtors' notice and claims agent.

2.1.118 "Official Committee" means the official committee of unsecured creditors of the Debtors appointed in the Chapter 11 Cases on December 15, 2022 [D.I. 231] pursuant to section 1102 of the Bankruptcy Code, as reconstituted from time to time.

2.1.119 ["Offshore Exchange Company" means an Entity established in a jurisdiction outside the United States to operate an offshore platform made available, with approval of the Debtors, to Holders of Allowed Dotcom Customer Entitlement Claims and the other prior customers of FTX.com who are not U.S. Persons.]

2.1.120 "Original Customer" means, with respect to a Customer Entitlement Claim, the Holder of such Customer Entitlement Claim on the Petition Date.

2.1.121 "Other Administrative Claim" means any Administrative Claim that is not a Professional Claim or Claim for U.S. Trustee Fees.

2.1.122 "Other Equity Interest" means any Equity Interest that is not a Preferred Equity Interest.

2.1.123 "Other Priority Claim" means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.

2.1.124 "Person" has the meaning set forth in section 101(41) of the Bankruptcy Code.

2.1.125 "Petition Date" means (a) November 11, 2023, with respect to each Debtor other than West Realm Shires Inc. and (b) November 14, 2023, with respect to West Realm Shires Inc.

2.1.126 "Plan" has the meaning set forth in Section 1.1.

2.1.127 "Plan Administration Agreement" means the agreement between the Debtors and the Plan Administrator governing the Plan Administrator's rights and obligations in connection with the Plan and Wind Down Entities, dated as of the Effective Date, which shall be filed as part of the Plan Supplement.

2.1.128 "Plan Administrator" means the Person or Entity, or any successor thereof, identified in the Plan Supplement.

2.1.129 "Plan Assets" means all property of each Estate and any property retained by any Debtor under the Plan.

2.1.130 "Plan Supplement" means the initial compilation of documents and forms of documents, schedules and exhibits to the Plan, to be filed and available on the Notice and Claims Agent's website at https://restructuring.ra.kroll.com/FTX/ no later than seven days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

2.1.131 "Pre-Distribution Requirements" has the meaning set forth in Section 7.14.

2.1.132 "Pre-Launch Cryptocurrency" means an asset that would have been a DLT Digital Asset but for the fact that such asset has not been issued and is not transferable using distributed ledger or blockchain technology as of the Petition Date, including PYTH and HOLE.

2.1.133 "Preference Replacement Claim" means any Claim arising under section 502(h) of the Bankruptcy Code from a successful Dotcom Customer Preference Action or a U.S. Customer Preference Action.

2.1.134 "Preferred Equity Interest" means with respect to a Debtor, Equity Interest in such Debtor that is entitled to preference or priority over any other Equity Interest in such Debtor with respect to the payment of dividends or distribution of assets upon liquidation or both, including (a) series A preferred stock issued by West Realm Shires Inc., (b) series B

preferred stock issued by FTX Trading, (c) series B-1 preferred stock issued by FTX Trading, and (d) series C preferred stock issued by FTX Trading.

2.1.135 "Prepetition" means, with respect to each Debtor, prior to the Petition Date for such Debtor.

2.1.136 "Preserved Potential Claim" means the Causes of Action set out in Exhibit [•] hereto.

2.1.137 "Priority Tax Claim" means a Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code, other than a Subordinated Tax Claim.

2.1.138 "Pro Rata" means, with respect to an Allowed Claim, the percentage represented by a fraction (a) the numerator of which shall be an amount equal to such Claim and (b) the denominator of which shall be an amount equal to the aggregate amount of Allowed and estimated Claims in the same Class as such Claim, except in cases where Pro Rata is used in reference to multiple Classes, in which case Pro Rata means the proportion that such Holder's Claim in a particular Class bears to the aggregate amount of all Allowed Claims and estimated in such multiple Classes.

2.1.139 "Professional" means an Entity: (a) employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 328, 363 and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date pursuant to section 327, 328, 329, 330, 331 or 363 of the Bankruptcy Code or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

2.1.140 "Professional Claim" means an Administrative Claim for the compensation of a Professional and the reimbursement of expenses incurred by such Professional from the Petition Date through and including the Confirmation Date.

2.1.141 "Professional Fee Escrow Account" means an account to be funded by the Debtors upon the Effective Date in an amount equal to the Professional Fee Reserve Amount.

2.1.142 "Professional Fee Order" means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* entered by the Bankruptcy Court on January 9, 2023 [D.I. 435].

2.1.143 "Professional Fee Reserve Amount" means the aggregate amount of unpaid Professional Claims for all Professionals employed by the Debtors and the Official Committee through and including the Confirmation Date as reasonably estimated by the Debtors in accordance with Section 3.4.3.

2.1.144 "Proof of Claim" means a proof of Claim filed against any of the Debtors in these Chapter 11 Cases.

2.1.145 "PropCo DM Claim" means the Allowed Claim of FTX DM against FTX Bahamas PropCo in the amount of $[•].

2.1.146 "PropCo General Unsecured Claim" means any Claim against FTX Bahamas PropCo other than a PropCo Ordinary Course Claim or the PropCo DM Claim.

2.1.147 "PropCo Ordinary Course Claim" means any Claim against FTX Bahamas PropCo arising in the ordinary course in respect of the ownership, use, sale or transfer of the property owned by FTX Bahamas Propco.

2.1.148 "Qualifying Customer Preference Settlement Participant" means any Holder of a Customer Entitlement Claim that has satisfied each of the following conditions: (a) has agreed to accept the Customer Preference Settlement Offer by an irrevocable election made on a properly executed and delivered Ballot, (b) has voted the related Customer Entitlement Claims held by such Holder to accept the Plan, (c) has not opted out of granting the releases set forth therein and (d) if such Holder holds Customer Entitlement Claims in an amount that is less than its Customer Preference Settlement Amount, such Holder has made a Cash payment to the Debtors on or prior to the Effective Date in an amount equal to the Customer Preference Settlement Amount *minus* the amount of such Holder's related Customer Entitlement Claims.

2.1.149 "Rejected Contract Claims Bar Date" means, with respect to any Executory Contract or Unexpired Lease that is rejected pursuant to the Plan, 4:00 p.m. (Eastern Time) on the earlier of (a) the 30th day after entry by the Bankruptcy Court of an order providing for the rejection of such Executory Contract or Unexpired Lease and (b) the 30th day after the Effective Date; *provided* that the deadline for filing any rejection damages claim in connection with any Executory Contract or Unexpired Lease rejected pursuant to a prior order of the Bankruptcy Court shall be the date set forth in the respective order authorizing such rejection.

2.1.150 "Released Parties" means the Exculpated Parties. Notwithstanding anything to the contrary in the Plan or Plan Supplement, no Excluded Party shall be a Released Party.

2.1.151 "Releasing Parties" means (a) the Debtors; (b) each of the Supporting Parties; (c) the Holders of all Claims who vote to accept the Plan and do not opt out of granting the releases set forth herein; (d) the Holders of all Claims that are Unimpaired under the Plan; (e) the Holders of all Claims whose vote to accept or reject the Plan is solicited but who (i) abstain from voting on the Plan and (ii) do not opt out of granting the releases set forth therein; (f) the Holders of all Claims or Interests who vote, or are deemed, to reject the Plan but do not opt out of granting the releases set forth therein; and (g) all other Holders of Claims or Interests to the maximum extent permitted by law. Holders who were not provided a Ballot or an Election Form and are not listed in clauses (a) through (g) above are not Releasing Parties.

2.1.152 "Schedules" means the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs filed by the

Debtors in these Chapter 11 Cases, each as may be amended, supplemented or modified from time to time.

2.1.153 "Section 510(b) Claim" means a Claim subject to subordination under section 510(b) of the Bankruptcy Code, including Section 510(b) FTT Claims.

2.1.154 "Section 510(b) FTT Claim" means any Claim (a) arising from the rescission of a purchase or sale of FTT, (b) for damages arising from the purchase or sale of FTT, or (c) for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

2.1.155 "Secured Claim" means a Claim (a) secured by a Lien on property in which an Estate has an interest, to the extent such Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code and to the extent of the value of its Holder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed as such pursuant to the Plan.

2.1.156 "Securities Act" means the United States Securities Act of 1933, as amended.

2.1.157 "Security" means a security as defined in section 2(a)(1) of the Securities Act.

2.1.158 "Separate Subsidiaries" means the Debtors listed in Exhibit [•] hereto, as may be updated, supplemented and amended from time to time in accordance with the terms of the Plan Supplement.

2.1.159 "Separate Subsidiary Claim" means any Claim against a Separate Subsidiary that is (a) not derivative of a Claim against another Debtor or (b) property of the estate of another Debtor under section 541 of the Bankruptcy Code; *provided* that Separate Subsidiary Claims shall not include any Separate Subsidiary Subordinated Intercompany Claims.

2.1.160 "Separate Subsidiary Intercompany Claim" means any Claim held by a Separate Subsidiary against a Debtor that is not a Separate Subsidiary.

2.1.161 "Separate Subsidiary Subordinated Intercompany Claim" means any Claim held by a Debtor (including a Debtor that is a Separate Subsidiary) against a Separate Subsidiary, including without limitation any Claim against a Separate Subsidiary that is derivative of a Claim against such Debtor or property of the Estate of such Debtor under Section 541 of the Bankruptcy Code.

2.1.162 "SNG Investments" has the meaning set forth in Section 1.2(b).

2.1.163 "Solicitation Procedures Order" means the order (a) approving the Disclosure Statement; (b) establishing a voting record date for the Plan; (c) approving

solicitation packages and procedures for the distribution thereof; (d) approving the forms of Ballots; (e) establishing procedures for voting on the Plan and (f) establishing notice and objection procedures for the confirmation of the Plan; entered by the Bankruptcy Court on [•] [D.I. [•]], together with any supplemental order(s) that may be entered by the Bankruptcy Court in connection therewith.

2.1.164 "Specially Designated Nationals and Blocked Persons" means individuals and companies owned or controlled by, or acting for or on behalf of, sanctioned countries as well as individuals, groups and entities, such as terrorists and narcotics traffickers designated under various sanctions programs as determined by the United States Treasury's Office of Foreign Assets Control.

2.1.165 "Stablecoin" means any Digital Asset designed to maintain a stable value relative to a reserve asset, such as a fiat currency or exchange-traded commodity.

2.1.166 "Subordinated Claim" means any (a) Subordinated Tax Claim or (b) other Claim for regulatory fines and penalties[, U.S. federal, state or local income or employment taxes, similar foreign taxes] and any other Claim that has been subordinated on the basis of structural subordination, equitable subordination, laws or policies subordinating recoveries to claims by victims of crime or fraud, or any other grounds available under applicable law, other than an Equitably Subordinated Claim.

2.1.167 "Subordinated Tax Claim" means any Claim for federal, state, local income or employment taxes, or for similar foreign tax, arising from activities, transactions, liabilities or events preceding the Petition Date.

2.1.168 "Subsequent Distribution Date" means a date after the Initial Distribution Date selected by the Plan Administrator for Distributions in accordance with Section 7.1.2.

2.1.169 "Supporting Parties" means [TBD].

2.1.170 "Terms of Service" means any contract between an FTX Exchange and its customers that governs the terms of use of such FTX Exchange by those customers.

2.1.171 "Unverified Customer Entitlement Claim" means a Customer Entitlement Claim in respect of which either (a) the Holder of such Customer Entitlement Claim has failed to submit the KYC Information of the Original Customer by a date determined by the Debtors or order of the Court or (b) the Original Customer of such Customer Entitlement Claim has failed to submit the KYC Information by a date determined by the Debtors or order of the Court.

2.1.172 "U.S. Convenience Claim" means (a) any U.S. Customer Entitlement Claim Allowed in an amount equal to or less than $10,000, or (b) any U.S. Customer Entitlement Claim Allowed in an amount greater than $10,000 but that is reduced to an amount equal to or less than $10,000 by an irrevocable written election of the Holder of such U.S. Customer Entitlement Claim made on a properly executed and delivered Ballot; *provided* that where any portion of a U.S. Customer Entitlement Claim has been transferred or subdivided, any transferred or subdivided portion shall continue to be treated together with the

entire initial U.S. Customer Entitlement Claim for purposes of determining whether any portion of such U.S. Customer Entitlement Claim qualifies as a U.S. Convenience Claim.

2.1.173 "U.S. Customer Entitlement Claim" means (a) any Customer Entitlement Claim against the FTX.US Exchange (including the Alameda U.S. Customer Claim) that is not a FTT Customer Entitlement Claim or a NFT Customer Entitlement Claim and (b) any Preference Replacement Claim relating to a U.S. Customer Preference Action that arises from a judgment entered in favor of a Debtor against a Customer of the FTX.US Exchange or any of such Customer's successors or assigns; *provided* that U.S. Customer Entitlement Claims shall not include U.S. Convenience Claims or *De Minimis Claims*.

2.1.174 "U.S. Customer Preference Action" means any and all Causes of Action to avoid any preferential payments or transfers of property from the FTX.US Exchange pursuant to section 547 of the Bankruptcy Code and any recovery action related thereto under section 550 of the Bankruptcy Code, or under any similar or related local, state, federal or foreign statutes or common law.

2.1.175 "U.S. Customer Priority Assets" means collectively:

(a) all fiat currency in segregated accounts designated by the Debtors as accounts for the benefit of customers associated with the FTX.US Exchange held by the Debtors on the Petition Date;

(b) all Digital Assets (other than Available NFTs) held by the Debtors and identified by the Debtors as held for customers in FTX.US AWS Wallets on the Petition Date and all proceeds relating to the sale, disposition or other monetization thereof;

(c) all proceeds relating to the recovery of Digital Assets subject to the Hacking Incident recovered by the Debtors to the extent that such proceeds are in respect of Digital Assets held in FTX.US AWS Wallets before, on or after the Petition Date;

(d) all proceeds from any Claim or Cause of Action against any Customer of the FTX.US Exchange and U.S. Customer Preference Actions or any of such Customer's successors or assigns, including any proceeds from any Customer Preference Settlement in respect of a U.S. Customer Preference Action;

(e) [all proceeds from the sale, disposition or other monetization of the FTX.US Exchange that is property of the Debtors;] and

(f) the U.S. Intercompany Shortfall Claim.

2.1.176 "U.S. Exchange Shortfall Amount" means $[•].[5]

2.1.177 "U.S. Intercompany Shortfall Claim" means a Claim against the General Pool subject to the waterfall priorities set forth in Section 4.2 in an amount equal to the U.S. Exchange Shortfall Amount.

2.1.178 "U.S. Trustee" means the Office of the United States Trustee for the District of Delaware.

2.1.179 "U.S. Trustee Fees" means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

2.1.180 "Unclaimed Distribution" means any Distribution under the Plan on account of an Allowed Claim to a Holder that has not: (a) accepted a particular Distribution or, in the case of a Distribution made by check, negotiated such check; (b) given written notice to the Distribution Agent of an intent to accept a particular Distribution; (c) responded in writing to the request of the Distribution Agent for information necessary to facilitate a particular Distribution; or (d) taken any other action necessary to facilitate such Distribution.

2.1.181 "Unexpired Lease" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

2.1.182 "Unimpaired" means any Claim or Interest that is not Impaired.

2.1.183 "Voluntary Release by Holders of Claims and Interests" means the release by Holders of Claims and Interests as set forth in Section 10.5.

2.1.184 "Voting" means the process by which a Holder of a Claim may vote to accept or reject the Plan, pursuant to the conditions in Article 4.

2.1.185 "Voting Deadline" means [•] (Eastern Time) on [•], 2024, by which time all Ballots must be actually received by the Notice and Claims Agent.

2.1.186 "Wind Down Budget" means the budget to fund the Wind Down Entities, which shall be included in the Plan Supplement, as may be updated, supplemented and amended from time to time in accordance with the terms of the Plan Supplement.

2.1.187 "Wind Down Cash Proceeds" means all Cash proceeds from the sale, disposition or other monetization of Plan Assets available for Distribution by the Plan Administrator, other than Cash reserved or applied by the Plan Administrator (a) to make

[5] Note to Draft: This value will represent the historical shortfall in the accounts associated with the FTX.US Exchange at the time of commencement of the Chapter 11 Cases, and will be set as the Debtors' estimate of the difference as of the Petition Date between (a) the aggregate amount of U.S. Customer Entitlement Claims and (b) the aggregate fair market value of (i) fiat currency in segregated accounts, (ii) Digital Assets in FTX.US AWS Wallets (other than NFTs and FTT) and (iii) Digital Assets subject to the Hacking Incident. In the event that any Digital Assets subject to the Hacking Incident are recovered after the Petition Date, such recovered amounts will reduce the U.S. Exchange Shortfall Amount.

Distributions under the Plan to Holders of Allowed Administrative Claims, Allowed Other Priority Claims or Allowed Secured Claims or (b) to pay expenses and costs of administering the Wind Down Entities.

2.1.188 "Wind Down Entity" means (a) for each Consolidated Debtor, the Consolidated Wind Down Trust and (b) for each other Debtor, the Estate of such Debtor after the Effective Date of the Plan.

2.1.189 "Wind Down Reserve" means a reserve, if any, in the amount set forth in the Wind Down Budget to fund the Wind Down Entities.

2.2. Rules of Interpretation

For the purposes of the Plan: (a) any reference herein to the word "including" or word of similar import shall be read to mean "including without limitation"; (b) unless otherwise specified, all references herein to "Articles" are references to Articles herein, hereof or hereto; (c) unless otherwise specified, the words "herein," "hereof" and "hereto" refer to the Plan in its entirety rather than a particular portion of the Plan; (d) captions and headings to Articles are inserted for the convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (e) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (f) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (g) all references to docket numbers of documents filed in these Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (h) all references to statutes, regulations, orders, rules of courts and the like shall mean as amended from time to time, and as applicable to these Chapter 11 Cases, unless otherwise stated; (i) any reference herein to a contract, agreement, lease, plan, policy, document or instrument being in a particular form or on particular terms and conditions means that the same shall be substantially in that form or substantially on those terms and conditions; (j) any reference herein to a contract, agreement, lease, plan, policy, document or instrument or schedule or exhibit thereto, whether or not filed, shall mean the same as amended, restated, modified or supplemented from time to time in accordance with the terms hereof or thereof; (k) any immaterial effectuating provisions may be interpreted by the Debtors and the Plan Administrator in such a manner that is consistent with the overall purpose and intent of the Plan, all without further Bankruptcy Court order; (l) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and permitted assigns; (m) except as otherwise expressly provided in the Plan or the Plan Supplement, after the Confirmation Date, where the Plan contemplates that any Debtor or the Plan Administrator shall take any action, incur any obligation, issue any security or adopt, assume, execute or deliver any contract, agreement, lease, plan, policy, document or instrument on or prior to the Effective Date, the same shall be duly and validly authorized by the Plan and effective against and binding upon such Debtor and/or the Plan Administrator, as applicable, on and after the Effective Date without further notice to, order of or other approval by the Bankruptcy Court, action under applicable law, regulation, order or rule, or the vote, consent, authorization or approval of the board of directors of any Debtor or any other Entity; (n) reference herein to the Plan Administrator, or any right of the Plan Administrator, shall be subject in all respects to the Plan Administration Agreement; and (o) except as otherwise provided in the Plan, anything required to be done by the Debtors or the

Plan Administrator, as applicable, on the Effective Date may be done on the Effective Date or as soon as reasonably practicable thereafter.

2.3. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws, shall govern the construction and implementation of the Plan and any agreement, document or instrument executed or entered into in connection with the Plan.

2.4. Computation of Time

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein, and all dates and times shall be determined based on prevailing time in Wilmington, Delaware. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

3. ADMINISTRATIVE EXPENSE CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims and Professional Claims, payment of which is provided for below.

3.1. Administrative Claim Bar Date

Any request for payment of an Administrative Claim must be filed and served on the Plan Administrator pursuant to the procedures specified in the notice of entry of the Confirmation Order and the Confirmation Order on or prior to the Administrative Claim Bar Date; *provided* that no request for payment is required to be filed and served pursuant to this Section 3.1 with respect to any:

(a) Administrative Claim that is Allowed as of the Administrative Claim Bar Date;

(b) 503(b)(9) Claim;

(c) Professional Claim; or

(d) Claim for U.S. Trustee Fees.

Any Holder of an Administrative Claim who is required to, but does not, file and serve a request for payment of such Administrative Claim pursuant to the procedures specified in the Confirmation Order on or prior to the Administrative Claim Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claim against any Wind Down Entity and such Administrative Claim shall be deemed satisfied as of the Effective Date without the need for any objection from the Plan Administrator or any notice to or action, order or approval of the Bankruptcy Court.

Any objection to a request for payment of an Administrative Claim that is required to be filed and served pursuant to this Section 3.1 must be filed and served on the Plan Administrator and the requesting party creditor (a) no later than 90 days after the Administrative Claim Bar Date or (b) by such later date as may be established by order of the Bankruptcy Court upon a motion by the Plan Administrator, with notice only to those parties entitled to receive notice pursuant to Bankruptcy Rule 2002.

3.2. General Administrative Claims

Except to the extent that a Holder of an Allowed General Administrative Claim agrees to less favorable treatment, the Holder of each Allowed General Administrative Claim shall receive Cash in an amount equal to the full unpaid amount of such Allowed General Administrative Claim on or as reasonably practicable after the later of (a) the Effective Date or (b) the date on which such Claim is Allowed.

3.3. 503(b)(9) Claims

Except to the extent that a Holder of an Allowed 503(b)(9) Claim agrees to less favorable treatment, the Holder of each Allowed 503(b)(9) Claim shall receive Cash in an amount equal to the full unpaid amount of such Allowed 503(b)(9) Claim on or as reasonably practicable after the later of (a) the Effective Date or (b) the date on which such Claim is Allowed.

3.4. Professional Claims

3.4.1 Final Fee Applications. All final requests for payment of Professional Claims shall be filed and served no later than 60 days after the Effective Date, in accordance with the procedures established under the Professional Fee Order and the Confirmation Order. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules and prior Bankruptcy Court orders.

3.4.2 Professional Fee Escrow Account. The Debtors shall establish and fund the Professional Fee Escrow Account on or prior to the Effective Date. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals. Except as provided in the last sentence of this paragraph, such funds shall not be considered property of the Wind Down Entities. The Plan Administrator shall pay Professional Claims in Cash no later than five Business Days after such Claims are Allowed by Final Order of the Bankruptcy Court. Any funds remaining in the Professional Fee Escrow Account following the approval of all Professionals' final fee applications provided for in Section 3.4.1 and payment of all Professionals' Allowed Professional Claims shall be allocated between the Dotcom Customer Priority Assets, the U.S. Customer Priority Assets and the General Pool pursuant to the terms of the Plan Supplement and shall be distributed by the Plan Administrator pursuant to the Plan.

3.4.3 Professional Fee Reserve Amount. Professionals shall provide good-faith estimates of their Professional Claims for purposes of the Professional Fee Escrow Account and shall deliver such estimates to the Debtors no later than seven (7) days prior to the anticipated Effective Date; *provided* that such estimates shall not be considered an admission or limitation with respect to the fees and expenses of such Professionals. If a Professional does not provide such an estimate, the Debtors may estimate, in their reasonable discretion, the Professional Claims of such Professional.

3.4.4 Post-Effective Date Fees and Expenses. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Plan Administrator, as the case may be, shall, in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional or other fees and expenses related to implementation and Consummation of the Plan incurred by the

Debtors, the Plan Administrator or the Official Committee, as the case may be, in each case in accordance with the Wind Down Budget. Except as otherwise specifically provided in the Plan, upon the Confirmation Date, any requirement that Professionals comply with section 327, 328, 329, 330, 331 or 1103 of the Bankruptcy Code or the Professional Fee Order in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Plan Administrator or, solely with respect to the matters set forth in Section 13.9, the Official Committee, may employ and pay any Professional in the ordinary course of business, in each case subject to the Wind Down Budget.

3.5. Statutory Fees Payable Pursuant to 28 U.S.C. § 1930

All fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date, including any applicable interest payable under section 3717 of Title 31 of the United States Code, shall be paid by the Debtors. On and after the Effective Date, to the extent applicable, the Plan Administrator shall pay any and all such fees and interest when due and payable (including any fraction thereof) until the earliest of the Chapter 11 Cases being closed, dismissed or converted to cases under chapter 7 of the Bankruptcy Code.

3.6. Expense Allocation

Unless otherwise specified herein, the Plan Administrator shall allocate Administrative Claims, professional or other fees and expenses related to the implementation and Consummation of the Plan and expenses and costs of administering the Wind Down Entities (collectively, "Case Expenses") as follows: (a) all Case Expenses related to FTX DM or the sale, disposition or other monetization of the FTX.com Exchange that is property of the Debtors shall be allocated solely to the Dotcom Customer Priority Assets; (b) all Case Expenses related to FTX Bahamas PropCo or the sale, disposition or other monetization of property of FTX Bahamas PropCo shall be allocated solely to FTX Bahamas PropCo; (c) all Case Expenses related to the sale, disposition or other monetization of the FTX.US Exchange that is property of the Debtors shall be allocated solely to the U.S. Customer Priority Assets; and (d) all other Case Expenses shall be allocated between the Dotcom Customer Priority Assets, the U.S. Customer Priority Assets, the General Pool and the Separate Subsidiaries, based on the Debtors' reasonable estimates of the relative distributable value in each pool as of the Confirmation Date, which estimates shall be set forth in the Plan Supplement.

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4. CLASSIFICATION, TREATMENT AND VOTING OF CLAIMS AND INTERESTS

4.1. Classification of Claims and Interests

All Claims and Interests except for Administrative Claims and 503(b)(9) Claims are classified in the Classes set forth in this Article 4. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest also is classified in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is Allowed as a Claim or Interest in that Class and has not been paid, released or otherwise satisfied prior to the Effective Date.

4.1.1 Summary of Classification and Treatment

The classification of Claims and Interests pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
1	Priority Tax Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
2	Other Priority Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
3	Secured Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
4	Separate Subsidiary Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
5A	Dotcom Customer Entitlement Claims	Impaired	Entitled to Vote
5B	U.S. Customer Entitlement Claims	Impaired	Entitled to Vote
5C	NFT Customer Entitlement Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote
7A	Dotcom Convenience Claims	Impaired	Entitled to Vote
7B	U.S. Convenience Claims	Impaired	Entitled to Vote
7C	General Convenience Claims	Impaired	Entitled to Vote
8A	PropCo Ordinary Course Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
8B	PropCo DM Claim	Impaired	Entitled to Vote
8C	PropCo General Unsecured Claims	Impaired	Entitled to Vote
9	Cancelled Intercompany Claims	Impaired	Not Entitled to Vote, Deemed to Reject
10	Intercompany Interests	Impaired	Not Entitled to Vote, Deemed to Reject
11	Subordinated Claims	Impaired	Entitled to Vote
12	Equitably Subordinated Claims	Impaired	Not Entitled to Vote, Deemed to Reject
13	FTT Interests	Impaired	Not Entitled to Vote, Deemed to Reject

Class	Claims and Interests	Status	Voting Rights
14	Preferred Equity Interests	Impaired	Not Entitled to Vote, Deemed to Reject
15	Section 510(b) Claims	Impaired	Not Entitled to Vote, Deemed to Reject
16	Other Equity Interests	Impaired	Not Entitled to Vote, Deemed to Reject
17	*De Minimis* Claims	Impaired	Not Entitled to Vote, Deemed to Reject

4.2. Distributions Waterfalls

4.2.1 Dotcom Customer Waterfall

Proceeds from the Dotcom Customer Priority Assets shall be applied in the following manner:

(a) *first*, to pay Case Expenses allocated to the Dotcom Customer Priority Assets pursuant to Section 3.6;

(b) *second*, to pay Allowed Priority Tax Claims and Allowed Other Priority Claims allocated to the Dotcom Customer Priority Assets;

(c) *third*, to pay and perform obligations owed to FTX DM under the FTX DM Global Settlement Agreement;

(d) *fourth*, to pay Allowed Dotcom Convenience Claims;

(e) *fifth*, to pay Allowed Dotcom Customer Entitlement Claims; and

(f) *sixth*, to transfer remaining proceeds to the General Pool.

4.2.2 U.S. Customer Waterfall

Proceeds from the U.S. Customer Priority Assets shall be applied in the following manner:

(a) *first*, to pay Case Expenses allocated to the U.S. Customer Priority Assets pursuant to Section 3.6;

(b) *second*, to pay Allowed Priority Tax Claims and Allowed Other Priority Claims allocated to the U.S. Customer Priority Assets;

(c) *third*, to pay Allowed U.S. Convenience Claims;

(d) *fourth*, to pay Allowed U.S. Customer Entitlement Claims; and

(e) *fifth*, to transfer remaining proceeds to the General Pool.

4.2.3 General Pool Waterfall

Proceeds in the General Pool shall be applied in the following manner:

(a) *first*, to pay Allowed Administrative Claims allocated to the General Pool pursuant to Section 3.6;

(b) *second*, to pay Allowed Priority Tax Claims and Allowed Other Priority Claims, other than Allowed Priority Tax Claims and Allowed Other Priority Claims (i) allocated to the Dotcom Customer Priority Assets or U.S. Customer Priority Assets, (ii) against FTX Bahamas PropCo or (iii) against any Separate Subsidiary;

(c) *third*, to pay Allowed General Convenience Claims;

(d) *fourth*, with respect to 66 percent of the amount next available for Distribution from the General Pool, to pay on a Pro Rata basis the Allowed Dotcom Intercompany Shortfall Claim and the Allowed U.S. Intercompany Shortfall Claim;

(e) *fifth*, with respect to the remaining amount available for Distribution from the General Pool, to pay on a Pro Rata basis Allowed General Unsecured Claims, any unpaid balance of the Allowed Dotcom Intercompany Shortfall Claim and any unpaid balance of the Allowed U.S. Intercompany Shortfall Claim;

(f) *sixth*, to pay Separate Subsidiary Intercompany Claims;

(g) *seventh,* to pay Allowed Subordinated Claims;

(h) *eighth*, to pay Allowed Equitably Subordinated Claims;

(i) *ninth*, to pay Allowed FTT Interests;

(j) *tenth*, to pay Preferred Equity Interests;

(k) *eleventh*, to pay Allowed Section 510(b) Claims; and

(l) *twelfth*, to pay Other Equity Interests.

4.2.4 [FTX Bahamas PropCo Waterfall

Proceeds from the sale, disposition or other monetization of property of FTX Bahamas PropCo shall be applied in the following manner:

(a) *first*, to pay Case Expenses allocated to FTX Bahamas PropCo pursuant to Section 3.6;

(b) *second*, to pay Allowed Priority Tax Claims and Allowed Other Priority Claims against FTX Bahamas PropCo;

(c) *third*, to pay Allowed PropCo Ordinary Course Claims;

(d) *fourth*, to pay the PropCo DM Claim;

(e) *fifth,* to pay Allowed PropCo General Unsecured Claims; and

(f) *sixth*, to transfer remaining proceeds to the Dotcom Customer Priority Assets.][6]

4.2.5 Separate Subsidiaries Waterfall

Proceeds from the sale, disposition or other monetization of property of each Separate Subsidiary shall be applied in the following manner:

(a) *first*, to pay Case Expenses allocated to such Separate Subsidiary pursuant to Section 3.6;

(b) *second*, to pay Allowed Priority Tax Claims and Allowed Other Priority Claims against such Separate Subsidiary;

(c) *third*, to pay Allowed Separate Subsidiary Claims against such Separate Subsidiary;

(d) *fourth*, to pay Allowed Separate Subsidiary Subordinated Intercompany Claims; and

(e) *fifth*, to transfer remaining proceeds to the General Pool.

4.3. Treatment of Claims and Interests

4.3.1 Class 1 – Priority Tax Claims

(a) *Classification*: Class 1 consists of all Allowed Priority Tax Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, or as ordered by the Bankruptcy Court, the Holder of an Allowed Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

[6] Note to Draft: Classification and treatment of claims against FTX Bahamas PropCo subject to ongoing discussions with FTX DM's Joint Official Liquidators.

(c) *Voting*: Claims in Class 1 are Unimpaired. Each Holder of a Priority Tax Claim is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. No Holder of Priority Tax Claim is entitled to vote to accept or reject the Plan.

4.3.2 Class 2 – Other Priority Claims

(a) *Classification*: Class 2 consists of all Other Priority Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Other Priority Claim, each Holder of such Allowed Other Priority Claim shall be paid in full in Cash on or as soon as reasonably practicable after the latest of (i) the Effective Date, (ii) the date on which such Other Priority Claim becomes Allowed, and (iii) such other date as may be ordered by the Bankruptcy Court.

(c) *Voting*: Claims in Class 2 are Unimpaired. Each Holder of an Other Priority Claim is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. No Holder of Other Priority Claims is entitled to vote to accept or reject the Plan.

4.3.3 Class 3 – Secured Claims

(a) *Classification*: Class 3 consists of Secured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive one of the following treatments, in the sole discretion of the Plan Administrator: (i) payment in full in Cash; (ii) delivery of the collateral securing such Allowed Secured Claim; or (iii) treatment of such Allowed Secured Claim in any other manner that renders the Claim Unimpaired.

(c) *Voting*: Claims in Class 3 are Unimpaired. Each Holder of a Secured Claim is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. No Holder of a Secured Claim is entitled to vote to accept or reject the Plan.

4.3.4 Class 4 – Separate Subsidiary Claims

(a) *Classification*: Class 4 consists of all Separate Subsidiary Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Separate Subsidiary Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Separate Subsidiary Claim, each Holder of an Allowed Separate Subsidiary Claim shall receive payment in full in Cash on or as soon as reasonably practicable after the latest of (i) the Effective Date, (ii) the date on which such Allowed Separate Subsidiary Claim becomes Allowed, and (iii) such other date as may be ordered by the Bankruptcy Court.

(c) *Voting*: Claims in Class 4 are Unimpaired. Each Holder of a Separate Subsidiary Claim is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. No Holder of a Separate Subsidiary Claim is entitled to vote to accept or reject the Plan.

4.3.5 Class 5A – Dotcom Customer Entitlement Claims

(a) *Classification*: Class 5A consists of all Dotcom Customer Entitlement Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Dotcom Customer Entitlement Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Dotcom Customer Entitlement Claims, each Holder of an Allowed Dotcom Customer Entitlement Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of the Dotcom Customer Priority Assets available to pay Dotcom Customer Entitlement Claims in accordance with the waterfall priority set forth in Section 4.2.1.

(c) *Voting*: Claims in Class 5A are Impaired. Each Holder of a Dotcom Customer Entitlement Claim is entitled to vote to accept or reject the Plan.

4.3.6 Class 5B – U.S. Customer Entitlement Claims

(a) *Classification*: Class 5B consists of all U.S. Customer Entitlement Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed U.S. Customer Entitlement Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed U.S. Customer Entitlement Claims, each Holder of an Allowed U.S. Customer Entitlement Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of the U.S. Customer Priority Assets

available to pay U.S. Customer Entitlement Claims in accordance with the waterfall priority set forth in Section 4.2.2.

(c) *Voting*: Claims in Class 5B are Impaired. Each Holder of a U.S. Customer Entitlement Claim is entitled to vote to accept or reject the Plan.

4.3.7 Class 5C – NFT Customer Entitlement Claims

(a) *Classification*: Class 5C consists of all NFT Customer Entitlement Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed NFT Customer Entitlement Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed NFT Customer Entitlement Claim, each Holder of an Allowed NFT Customer Entitlement Claim shall receive the Available NFT associated with such Allowed NFT Customer Entitlement Claim.

(c) *Voting*: Claims in Class 5C are Impaired. Each Holder of an NFT Customer Entitlement Claim is entitled to vote to accept or reject the Plan.

4.3.8 Class 6 – General Unsecured Claims

(a) *Classification*: Class 6 consists of all General Unsecured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of Distributions from the General Pool available to pay General Unsecured Claims in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Claims in Class 6 are Impaired. Each Holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

4.3.9 Class 7A – Dotcom Convenience Claims

(a) *Classification*: Class 7A consists of all Dotcom Convenience Claims.

(b) *Treatment*: On the later of the Initial Distribution Date or as soon as reasonably practicable after a Dotcom Convenience Claim

becomes Allowed, in full and final satisfaction, settlement, release, and discharge of and in exchange for its Allowed Dotcom Convenience Claim, each Holder of an Allowed Dotcom Convenience Claim shall receive payment in Cash in an amount equal to [•] percent of such Allowed Dotcom Convenience Claim.

(c) *Voting*: Claims in Class 7A are Impaired. Each Holder of a Dotcom Convenience Claim is entitled to vote to accept or reject the Plan.

4.3.10 Class 7B – U.S. Convenience Claims

(a) *Classification*: Class 7B consists of all U.S. Convenience Claims.

(b) *Treatment*: On the later of the Initial Distribution Date or as soon as reasonably practicable after a U.S. Convenience Claim becomes Allowed, in full and final satisfaction, settlement, release, and discharge of and in exchange for its Allowed U.S. Convenience Claim, each Holder of an Allowed U.S. Convenience Claim shall receive payment in Cash in an amount equal to [•] percent of such Allowed U.S. Convenience Claim.

(c) *Voting*: Claims in Class 7B are Impaired. Each Holder of a U.S. Convenience Claim is entitled to vote to accept or reject the Plan.

4.3.11 Class 7C – General Convenience Claims

(a) *Classification*: Class 7C consists of all General Convenience Claims.

(b) *Treatment*: On the later of the Initial Distribution Date or as soon as reasonably practicable after a General Convenience Claim becomes Allowed, in full and final satisfaction, settlement, release, and discharge of and in exchange for its Allowed General Convenience Claim, each Holder of an Allowed General Convenience Claim shall receive payment in Cash in an amount equal to [•] percent of such Allowed General Convenience Claim.

(c) *Voting*: Claims in Class 7C are Impaired. Each Holder of a General Convenience Claim is entitled to vote to accept or reject the Plan.

4.3.12 [Class 8A – PropCo Ordinary Course Claims

(a) *Classification*: Class 8A consists of all Allowed PropCo Ordinary Course Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed PropCo Ordinary Course Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed PropCo Ordinary Course Claim, each Holder of an Allowed PropCo Ordinary Course Claim shall receive payment in full in Cash on or as soon as reasonably practicable after the latest of (i) the Effective Date, (ii) the date on which such Allowed PropCo Ordinary Course Claim becomes Allowed, and (iii) such other date as may be ordered by the Bankruptcy Court.

(c) *Voting*: Claims in Class 8A are Unimpaired. Each Holder of a PropCo Ordinary Course Claim is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. No Holder of a PropCo Ordinary Course Claim is entitled to vote to accept or reject the Plan.

4.3.13 Class 8B – PropCo DM Claim

(a) *Classification*: Class 8B consists of the Allowed PropCo DM Claim.

(b) *Treatment*: Except to the extent that a Holder of an Allowed PropCo DM Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed PropCo DM Claim, each Holder of an Allowed PropCo DM Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of the proceeds from the sale, disposition or other monetization of property of FTX Bahamas PropCo available to pay PropCo DM Claims in accordance with the waterfall priority set forth in Section 4.2.4.

(c) *Voting*: Claims in Class 8B are Impaired. Each Holder of an PropCo General Unsecured Claim is entitled to vote to accept or reject the Plan.

4.3.14 Class 8C – PropCo General Unsecured Claims

(a) *Classification*: Class 8C consists of all Allowed PropCo General Unsecured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed PropCo General Unsecured Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed PropCo General Unsecured Claim, each Holder of an Allowed PropCo General Unsecured Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of the proceeds from the

sale, disposition or other monetization of property of FTX Bahamas PropCo available to pay PropCo General Unsecured Claims in accordance with the waterfall priority set forth in Section 4.2.4.

(c) *Voting*: Claims in Class 8C are Impaired. Each Holder of a PropCo General Unsecured Claim is entitled to vote to accept or reject the Plan.][7]

4.3.15 Class 9 – Cancelled Intercompany Claims

(a) *Classification*: Class 9 consists of all Cancelled Intercompany Claims.

(b) *Treatment*: All Cancelled Intercompany Claims shall be cancelled, released or otherwise settled in full, and the Holders of Cancelled Intercompany Claims shall not be entitled to, and shall not receive or retain, any Distributions, property or interest in property on account of such Claims under the Plan.

(c) *Voting*: Claims in Class 9 are Impaired. Each Holder of a Cancelled Intercompany Claim is conclusively deemed to have rejected the Plan. No Holder of a Cancelled Intercompany Claim is entitled to vote to accept or reject the Plan.

4.3.16 Class 10 – Intercompany Interests

(a) *Classification*: Class 10 consists of all Intercompany Interests.

(b) *Treatment*: No Holder of an Intercompany Interest shall receive any Distributions on account of its Intercompany Interest. On and after the Effective Date, all Intercompany Interests shall, at the option of the Debtors, either be reinstated, set off, settled, addressed, distributed, contributed, merged or cancelled.

(c) *Voting*: Claims in Class 10 are Impaired. Each Holder of an Intercompany Interest is conclusively deemed to have rejected the Plan. No Holder of an Intercompany Interest is entitled to vote to accept or reject the Plan.

4.3.17 Class 11 – Subordinated Claims

(a) *Classification*: Class 11 consists of all Subordinated Claims.

[7] Note to Draft: Classification and treatment of claims against FTX Bahamas PropCo subject to ongoing discussions with FTX DM's Joint Official Liquidators.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Subordinated Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Subordinated Claim, each Holder of an Allowed Subordinated Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of Distributions from the General Pool in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Claims in Class 11 are Impaired. Each Holder of a Subordinated Claim is entitled to vote to accept or reject the Plan.

4.3.18 Class 12 – Equitably Subordinated Claims

(a) *Classification*: Class 12 consists of all Equitably Subordinated Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Equitably Subordinated Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Equitably Subordinated Claim, each Holder of an Allowed Equitably Subordinated Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of Distributions from the General Pool in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Claims in Class 12 are Impaired. Each Holder of an Equitably Subordinated Claim is conclusively deemed to have rejected the Plan. No Holder of an Equitably Subordinated Claim is entitled to vote to accept or reject the Plan.

4.3.19 Class 13 – FTT Interests

(a) *Classification*: Class 13 consists of all FTT Interests.

(b) *Treatment*: Except to the extent that a Holder of an Allowed FTT Interest agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed FTT Interest, each Holder of an Allowed FTT Interest shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of Distributions from the General Pool in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Claims in Class 13 are Impaired. Each Holder of an FTT Interest is conclusively deemed to have rejected the Plan. No Holder of an FTT Interest is entitled to vote to accept or reject the Plan.

4.3.20 Class 14 – Preferred Equity Interests

(a) *Classification*: Class 14 consists of all Preferred Equity Interests.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Preferred Equity Interest agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Preferred Equity Interest, each Holder of an Allowed Preferred Equity Interest shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of Distributions from the General Pool in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Interests in Class 14 are Impaired. Each Holder of a Preferred Equity Interest is conclusively deemed to have rejected the Plan. No Holder of a Preferred Equity Interest is entitled to vote to accept or reject the Plan.

4.3.21 Class 15 – Section 510(b) Claims

(a) *Classification*: Class 15 consists of all Section 510(b) Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Section 510(b) Claim agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Section 510(b) Claim, each Holder of an Allowed Section 510(b) Claim shall receive payment in Cash in an amount equal to such Holder's Pro Rata share of Distributions from the General Pool in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Claims in Class 15 are Impaired. Each Holder of a Section 510(b) Claim is conclusively deemed to have rejected the Plan. No Holder of a Section 510(b) Claim is entitled to vote to accept or reject the Plan.

4.3.22 Class 16 – Other Equity Interests

(a) *Classification*: Class 16 consists of all Other Equity Interests.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Equity Interest agrees to less favorable treatment, and in full and final satisfaction, settlement, release and discharge of and in exchange for its Allowed Other Equity Interest, each Holder of an Allowed Other Equity Interest shall receive its share equal to such Holder's Pro Rata share of Distributions from the General Pool in accordance with the waterfall priority set forth in Section 4.2.3.

(c) *Voting*: Interests in Class 16 are Impaired. Each Holder of an Other Equity Interest is conclusively deemed to have rejected the Plan. No Holder of an Other Equity Interest is entitled to vote to accept or reject the Plan.

4.3.23 Class 17 – *De Minimis* Claims

(a) *Classification*: Class 17 consists of all *De Minimis* Claims.

(b) *Treatment*: No Holder of a *De Minimis* Claim shall receive any Distributions on account of its *De Minimis* Claim. On and after the Effective Date, all *De Minimis* Claims shall be cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise.

(c) *Voting*: Claims in Class 17 are Impaired. Each Holder of a *De Minimis Claim* is conclusively deemed to have rejected the Plan. No Holder of a *De Minimis* Claim is entitled to vote to accept or reject the Plan.

4.4. Valuation of Claims

Unless otherwise expressly provided in the Digital Assets Estimation Order, the value of a Claim in respect of a Digital Asset shall be calculated by converting the value of such Digital Asset into Cash as of the Petition Date utilizing the conversion rates set forth in the Digital Assets Conversion Table.

4.5. Special Provision Governing Unimpaired Claims

Except as otherwise provided herein, the Plan shall not affect the Plan Administrator's rights in respect of any Unimpaired Claims, including legal and equitable defenses or setoff or recoupment rights with respect thereto.

4.6. Acceptance by Impaired Classes

An Impaired Class of Claims shall have accepted the Plan if: (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Claims entitled to vote actually voting in such Class have voted to accept the Plan; and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Claims entitled to vote actually voting in such Class have voted to accept the Plan.

4.7. Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or an Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purpose of determining

acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

4.8. Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class of Claims or Interests is eligible to vote and no Holder of Claims or Interests, as applicable, in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

4.9. Intercompany Interests

To the extent reinstated under the Plan, Distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and the Wind Down Entities' agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

4.10. Confirmation Pursuant to Sections 1129(a) and 1129(b) of the Bankruptcy Code

For purposes of Confirmation, section 1129(a)(10) of the Bankruptcy Code shall be satisfied if any one of Class 5A, 5B, 5C, 6, 7A, 7B, 7C, 8B, 8C and 11 accepts the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class or Classes of Claims and Interests. Classes 9, 10, 12, 13, 14, 15, 16 and 17 are deemed to reject the Plan.

5. IMPLEMENTATION OF THE PLAN

5.1. Operations Between the Confirmation Date and Effective Date

During the period from the Confirmation Date through and until the Effective Date, the Debtors may continue to operate as debtors-in-possession, subject to all applicable orders of the Bankruptcy Court.

5.2. Global Settlement of Claims and Interests

In consideration of the classification, treatment, Distributions, releases and other benefits provided by the Debtors to their stakeholders under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise, settlement and resolution (the "Global Settlement") of all Claims, Interests and Causes of Action against, by or among the Debtors, including without limitation: (a) the actual or purported fraud, unjust enrichment, misappropriation, conversion and misconduct of former Insiders; (b) any basis for the contractual, structural and legal subordination rights of any Claim or Interest or any Distribution to be made on account of any Claim or Interest; (c) the purported commingling and misuse of customer deposits and corporate funds; (d) the tracing of assets of individual Debtors to particular sources of funding; (e) transactions among the Debtors prior to and on the Effective Date; (f) the allocation of corporate and administrative expenses across each of the Debtors; (g) the effects and consequences of the Debtors' Terms of Service and whether the assets held by the FTX.com Exchange and the FTX.US Exchange are property of the Debtors' Estates; (h) the Debtors' disregard for corporate separateness before the Petition Date; (i) any causes of action by a Debtor against other Debtors or the Insiders of other Debtors; (j) the purported absence of adequate corporate governance, cash management, accounting and cybersecurity controls by the Debtors and their Affiliates prior to the commencement of the Chapter 11 Cases; and (k) all Causes of Action relating to any of the foregoing.

In connection with the implementation of the Global Settlement pursuant to the Plan: (a) the value of Claims in respect of Digital Assets shall be calculated pursuant to Section 4.4; (b) the Dotcom Intercompany Shortfall Claim and the U.S. Intercompany Shortfall Claim shall be recognized for the benefit of Holders of Allowed Dotcom Customer Entitlement Claims and Allowed U.S. Customer Entitlement Claims; (c) the Alameda U.S. Customer Claim shall be recognized as part of the General Pool; (d) Claims shall be classified and treated as set forth in Article 4, which entitles Holders of Allowed Dotcom Customer Entitlement Claims and Allowed U.S. Customer Entitlement Claims to recover against the (i) Dotcom Customer Priority Assets and the U.S. Customer Priority Assets, respectively, and (ii) General Pool, in accordance with the waterfall priorities set forth in Section 4.2; (e) the Consolidated Debtors shall be substantively consolidated as set forth in Section 5.5; (f) Cancelled Intercompany Claims shall be cancelled; (g) Separate Subsidiary Intercompany Claims, Subordinated Claims, Equitably Subordinated Claims, FTT Interests, Preferred Equity Interests and Section 510(b) Claims shall be subordinated to Claims of other Holders, in accordance with the waterfall priorities set forth in Section 4.2; (h) Holders of Other Equity Interests shall recover against the General Pool in accordance with the waterfall priorities set forth in Section 4.2; (h) Distributions to customers and creditors shall be made in Cash (other than in Available NFTs) as set forth in Articles 4 and 7 and (i) all assets scheduled by the Debtors shall constitute property of the Debtors' Estates.

The Plan shall be deemed a motion to approve the Global Settlement pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Global Settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as findings by the Bankruptcy Court that the Global Settlement is fair, equitable, reasonable and in the best interests of the Debtors, their Estates and Holders of Claims and Interests.

5.3. Customer Preference Settlement

5.3.1 Customer Preference Settlement. Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the mutual compromises described in this Section 5.3 and other benefits provided under the Plan, on the Effective Date, the Debtors shall be authorized to effectuate the Customer Preference Settlement with all Qualifying Customer Preference Settlement Participants.

5.3.2 Effect of Customer Preference Settlement. Pursuant to, and as part of, the Customer Preference Settlement, on the Effective Date: (a) all Customer Entitlement Claims, if any, held by a Qualifying Customer Preference Settlement Participant shall be reduced or fully extinguished, as applicable, by the Customer Preference Settlement Amount; and (b) all Customer Preference Actions against such Qualifying Customer Preference Settlement Participant that are not Excluded Customer Preference Actions shall be forever released, waived and discharged. No Preference Replacement Claims shall arise out of, or result from, any Customer Preference Settlement.

5.3.3 Excluded Customer Preference Actions. The Debtors shall have the right to exclude any Customer Preference Action from the Customer Preference Settlement by sending written notice to the Holder of the applicable Customer Entitlement Claim on or prior to Confirmation designating such Customer Preference Action as an Excluded Customer Preference Action. The Debtors shall not designate a Customer Preference Action as an Excluded Customer Preference Action unless the Debtors have determined there is a reasonable basis to conclude that, among other things: (a) the recipient of the applicable preferential payment or transfer (i) was an Insider of any Debtor, (ii) was a current or former employee of the Debtors or of any current or former Affiliate of the Debtors, (iii) may have had actual or constructive knowledge of the commingling and misuse of Customer deposits and corporate funds, or (iv) either (x) changed its know your customer information to facilitate withdrawals from the applicable FTX Exchange or (y) received manual permission from the Debtors to facilitate withdrawals when withdrawals were otherwise halted from the FTX Exchange; (b) any Debtor has a Cause of Action or a defense against the recipient of the applicable preferential payment or transfer (or a subsequent transferee of the applicable Customer Entitlement Claim) or any of its Affiliates other than a claim arising under a Customer Preference Action; or (c) the Customer Preference Settlement Amount for the Holder of the applicable Customer Entitlement Claim may not reflect the fair value of such Excluded Customer Preference Action. All rights and defenses shall be reserved with respect to any Excluded Customer Preference Action and the Customer Preference Settlement Offer shall not apply to any Excluded Customer Preference Action. Any Holder of a Customer Entitlement Claim that receives notice from the Debtors that its Customer Preference Settlement Amount is affected by an Excluded Customer Preference Action shall not be

eligible for the Customer Preference Settlement with respect to such Excluded Customer Preference Action except as the Debtors may otherwise agree in writing.

5.3.4 Approval of Customer Preference Settlement. The Plan shall be deemed a motion to approve the Customer Preference Settlement pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Customer Preference Settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as findings by the Bankruptcy Court that the Customer Preference Settlement is fair, equitable, reasonable and in the best interests of the Debtors, their Estates and Holders of Claims and Interests.

5.4. Other Settlements

Any settlement agreement entered into among any of the Debtors and Holders of Claims or Interests that is contained in the Plan Supplement is incorporated into the Plan and shall become effective in accordance with its terms. The Plan shall be deemed a motion to approve such settlement agreements pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such settlements under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as findings by the Bankruptcy Court that such settlements are fair, equitable, reasonable and in the best interests of the Debtors, their Estates and Holders of Claims and Interests.

5.5. Substantive Consolidation

Pursuant to sections 105, 363, 365 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and as an integral part of the Global Settlement pursuant to the Plan, the Plan shall be deemed a motion by the Debtors seeking the approval, effective as of the Effective Date, of the substantive consolidation of the Estates of the Consolidated Debtors into a single Entity formed as a Delaware trust (the "Consolidated Wind Down Trust") for the purposes of effectuating and implementing the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such substantive consolidation of the Estates of the Consolidated Debtors, as well as findings by the Bankruptcy Court that such substantive consolidation is fair, equitable, reasonable and in the best interests of the Debtors, their Estates and the Holders of Claims and Interests.

Except as otherwise provided herein and subject in all respects to the classification and treatment of Claims and Interests set forth in Article 4, as a result of the substantive consolidation of the Estates of the Consolidated Debtors: (a) all property of the Consolidated Debtors shall vest in, and constitute the property of, the Consolidated Wind Down Trust, free and clear of any and all Liens, charges or other encumbrances or interests, pursuant to Section 5.9; (b) all guarantees of any Consolidated Debtor of the payment, performance or collection of obligations of another Consolidated Debtor shall be eliminated and cancelled; (c) all joint obligations of two or more Consolidated Debtors and multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the Consolidated Wind Down Trust; (d) all Cancelled Intercompany Claims shall be deemed cancelled; and (e) each Claim filed or scheduled in the Chapter 11 Case of any

Consolidated Debtor shall be deemed filed against the Consolidated Debtors and a single obligation of the Consolidated Wind Down Trust.

Except as otherwise provided herein, the substantive consolidation set forth in this Section 5.5 shall not: (a) affect the separate legal existence of the Consolidated Debtors for purposes other than implementation of the Plan pursuant to its terms; (ii) constitute or give rise to any defense, counterclaim or right of netting or setoff with respect to any Cause of Action vesting in the Consolidated Wind Down Trust that could not have been asserted against the Consolidated Debtors; or (iii) constitute the transfer or assignment of, of give rise to any right under, any executory contract, insurance contract or other contract to which a Consolidated Debtor is party, except to the extent required by section 365 of the Bankruptcy Code in connection with the assumption of such contract by the applicable Debtors.

5.6. Wind Down Entities

The purpose of the Wind Down Entities is to monetize the Plan Assets and pay Distributions as promptly as reasonably practicable. The Wind Down Entities shall hold Plan Assets for sale; sell Plan Assets; administer, and close as necessary, the Chapter 11 Cases; administer, reconcile and settle claims; and liquidate the Debtors and their non-Debtor subsidiaries pursuant to the terms of the Plan Supplement. The Plan Administrator shall be vested with all other powers and authority set forth in the Plan and the Plan Administration Agreement, shall be deemed to have been appointed as the Debtors' Estates' representative pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, and shall have the duties of a trustee set forth in sections 704(a)(1), 704(a)(2) and 704(a)(5) of the Bankruptcy Code.

5.7. Plan Funding Mechanism

Distributions under the Plan shall be funded from (a) Cash on hand, (b) Available NFTs, (c) Wind Down Cash Proceeds, and (d) any other Plan Assets, except as expressly set forth herein.

5.8. Plan Administrator

The Plan Administrator shall administer the Wind Down Entities after the Effective Date in accordance with the Plan Administration Agreement. The appointment of the Plan Administrator shall be approved in the Confirmation Order. The powers and duties of the Plan Administrator shall be set forth in the Plan and the Plan Administration Agreement, and will include the power and authority to, among other things, establish, administer, adjust and maintain the Disputed Claims Reserve and the Wind Down Reserve. The Plan Administrator shall be a fiduciary of the Wind Down Entities and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administration Agreement.

5.9. Vesting of Assets

Except as otherwise expressly provided in the Plan or the Confirmation Order, as of the Effective Date, all Plan Assets irrevocably shall be transferred to and automatically vested in the Wind Down Entities, for the benefit of Holders of Claims, free and clear of all Liens, Claims, charges or other encumbrances or interests to the extent permitted by section 1141 of the

Bankruptcy Code. All property held for Distribution pursuant to the Plan shall be held in trust for the benefit of the Holders of Allowed Claims and Interests and to pay the expenses of the administration of the Wind Down Entities. Upon the vesting of the Plan Assets, the Debtors nor the Consolidated Debtors shall have any interest in or with respect to the Plan Assets and such assets shall not be deemed property of the Debtors or Wind Down Entities.

5.10. D&O Policies

As of the Effective Date, the Debtors shall be deemed to have assumed all of the Debtors' D&O Policies pursuant to sections 105 and 365(a) of the Bankruptcy Code. The Debtors' D&O Policies purchased on or after the Petition Date shall continue in force following the Effective Date subject to the terms and conditions of such D&O Policies. Coverage for defense and indemnity under any assumed or continued D&O Policies shall remain available within the definition of "Insured" in any of the D&O Policies subject to the terms and conditions of such D&O Policies. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption or continuation, as applicable, of each D&O Policy. Notwithstanding anything to the contrary contained in the Plan, and except as otherwise may be provided in an order of the Bankruptcy Court, Confirmation of the Plan shall not discharge, impair or otherwise modify any obligations assumed by the foregoing assumption or continuation of the D&O Policies, and each such obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed. The D&O Policies (i) are prefunded and will not require any additional premiums on or after the Effective Date, (ii) provide coverage for those insureds currently covered by such policies for the remaining term of such policies and (iii) in the case of the D&O Policies purchased on or after the Petition Date, provide runoff or tail coverage after the Effective Date to the fullest extent permitted by such policies.

5.11. Cancellation of Existing Interests

On the Effective Date, except as otherwise specifically provided for in the Plan or any agreement, instrument or other document incorporated into the Plan, the obligations of the Debtors under any Certificate, Interest, share, note, purchase right, option, warrant, intercreditor agreement, guaranty, indemnity or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors or giving rise to any Claim or Interest shall be cancelled solely as to the Debtors, and the Debtors shall not have any continuing obligations thereunder and shall be released therefrom.

5.12. Section 1146 Exemption from Certain Transfer Taxes and Recording Fees

Pursuant to, and to the fullest extent permitted by, section 1146(a) of the Bankruptcy Code, any transfers from the Debtors to the Wind Down Entities or to any other Person pursuant to, in contemplation of, or in connection with the Plan (including any transfer pursuant to: (a) the Distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; or (b) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by or in any way related to the Plan) shall not be subject to any

document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, sales and use tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment, and the appropriate state or local government officials or agents shall, and shall be directed to, forgo the collection of any such tax, recordation fee or government assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee or government assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

5.13. Preservation of Causes of Action

Except as otherwise provided in Article 10 or the other provisions of the Plan, each Cause of Action of a Debtor shall be preserved and, along with the exclusive right to enforce such Cause of Action, shall vest exclusively in the Wind Down Entities as of the Effective Date. Any Cause of Action against any Customer of the FTX.com Exchange or any of such Customer's successors or assigns shall vest exclusively in the Wind Down Entities and constitute a Dotcom Customer Priority Asset, and any such Cause of Action against any customer of the FTX.US Exchange shall vest exclusively in the Wind Down Entities and constitute a U.S. Customer Priority Asset. Unless a Cause of Action is expressly waived, relinquished, released or compromised in the Plan or an order of the Bankruptcy Court, the Plan Administrator expressly reserves such Cause of Action for later adjudication and, accordingly, no doctrine of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), laches or other preclusion doctrine shall apply to such Cause of Action as a consequence of Confirmation, the Plan, the vesting of such Cause of Action in the Wind Down Entities, any order of the Bankruptcy Court or these Chapter 11 Cases. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as an indication that the Debtors or the Plan Administrator, as applicable, will not pursue such Cause of Action.

5.14. Effectuating Documents and Further Transactions

The Debtors or the Plan Administrator, as applicable, may take all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The secretary, any assistant secretary or any other appropriate officer of each Debtor shall be authorized to certify or attest to any of the foregoing actions.

From and after the Confirmation Date but prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the shareholders, directors or members of the Debtors shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate), pursuant to applicable law, and without any requirement of further action by the shareholders, directors, managers or partners of the Debtors, or the need for any approvals, authorizations, actions or consents.

5.15. Wind Down of Wind Down Entities, Excluded Entities and Non-Debtor Subsidiaries

The Debtors and the Plan Administrator, as applicable, shall be vested with all powers and authority to (a) make equity contributions to Debtor and non-Debtor Affiliates with Plan Assets and (b) convert into equity any prepetition or post-petition Intercompany Claims held by any Debtor that is not cancelled, released or otherwise settled in full pursuant to the Plan, in each case, to effectuate or facilitate the wind down of any Wind Down Entities, Excluded Entities and non-Debtor subsidiaries either prior to, on or after the Effective Date.

6. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1. Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided herein, and subject to the occurrence of the Effective Date, all Executory Contracts and Unexpired Leases will be rejected by the Plan on the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code, other than Executory Contracts or Unexpired Leases (a) previously assumed or rejected pursuant to an order of the Bankruptcy Court, (b) that are the subject of a pending motion to assume or (c) that are specifically described in the Plan to be assumed in connection with the Plan. Entry of the Confirmation Order by the Bankruptcy Court, subject to and upon the occurrence of the Effective Date, shall constitute approval of the rejection of such Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code. Unless otherwise indicated, rejection of the Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date.

6.2. Claims Against the Debtors upon Rejection

No Executory Contract or Unexpired Lease rejected by the Debtors on or prior to the Effective Date shall create any obligation or liability of the Debtors that is not a Claim. Any Proof of Claim arising from or relating to the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan must be filed with the Notice and Claims Agent before the Rejected Contract Claims Bar Date. **Any Claim arising from or relating to the rejection of an Executory Contract or Unexpired Lease that is not filed with the Notice and Claims Agent by the Rejected Contract Claims Bar Date will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Debtors' Estates, the Wind Down Entities, the Plan Administrator or any of their property**. Any Allowed Claim arising from the rejection of an Executory Contract or Unexpired Lease shall be classified as a General Unsecured Claim and shall be treated in accordance with Section 4.3.8.

6.3. Modification, Amendments, Supplements, Restatements or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is rejected shall include all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements have been previously rejected or repudiated or are rejected or repudiated under the Plan.

Modifications, amendments, supplements and restatements to Prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the Prepetition nature of such Executory Contracts or Unexpired Leases or the validity, priority or amount of any Claims that may arise in connection therewith.

6.4. Reservation of Rights

Nothing contained in the Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease, or that any Debtor has any liability thereunder.

7. PROVISIONS GOVERNING DISTRIBUTIONS

7.1. Distributions Timing

7.1.1 Initial Distribution Date. On the Initial Distribution Date, the Distribution Agent shall commence Distributions under the Plan on account of each Claim that is Allowed on or prior to the Effective Date.[8]

7.1.2 Subsequent Distribution Dates. The Plan Administrator shall identify, in his or her reasonable discretion and in accordance with the Plan Administration Agreement, periodic dates after the Initial Distribution Date to be Subsequent Distribution Dates for purposes of making additional Distributions under the Plan. Each Subsequent Distribution Date shall be a Business Day.

7.1.3 Distributions to Holders of Claims Allowed After the Effective Date. The Distribution Agent shall make Distributions to Holders of Claims Allowed after the Effective Date in accordance with the applicable provision of Article 4 on the first Subsequent Distribution Date after such Claim is Allowed. Unless the Plan Administrator otherwise agrees, no partial Distribution shall be made with respect to such Claim until all disputes in connection with such Claim have been resolved by Final Order of the Bankruptcy Court.

7.2. Distributions to Holders of Customer Entitlement Claims

7.2.1 Distributions of Dotcom Customer Entitlement Claims, U.S. Customer Entitlement Claims and Allocations of Wind Down Cash Proceeds. On any Distribution Date, the Plan Administrator may direct the Distribution Agent to Distribute to the Holders of Allowed Dotcom Customer Entitlement Claims or Allowed U.S. Customer Entitlement Claims the Wind Down Cash Proceeds that the Plan Administrator, in his or her reasonable discretion and in accordance with the Plan and the Plan Administration Agreement, determines are Wind Down Cash Proceeds that belong to the Dotcom Customer Priority Assets or U.S. Customer Priority Assets, respectively, in each case, in accordance with Sections 4.3.5 and 4.3.6.

7.2.2 Final Distribution at Closing of the Chapter 11 Cases. On or prior to the closing of the Chapter 11 Cases, the Plan Administrator shall Distribute (such Distribution, the "Final Distribution") all remaining Wind Down Cash Proceeds in accordance with the waterfall priority set forth in Section 4.2 and the classification and treatment set forth in Section 4.3.

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[8] Note to Draft: Distributions dates shall be determined by the Plan Administrator in his or her reasonable discretion. To determine the "Initial Distribution Date," the Plan Administrator shall consider, among many factors, the costs associated with making Distributions, the assets and liabilities of the Wind Down Entity, liquidity, projected revenues and cash flows, status likelihood of successful resolution of current and future litigation and tax considerations. The Initial Distribution Date may not be the Effective Date.

7.3. Record Date and Delivery of Distributions

7.3.1 Record Date for Distributions

In advance of each Distribution Date, the Plan Administrator shall establish a Distribution Record Date for purposes of determining the Holders of Allowed Claims entitled to receive a Distribution on such Distribution Date, which Distribution Record Date shall be no less than [•] and no more than [•] days prior to the corresponding Distribution Date. On each Distribution Record Date, the Claims Register shall be closed and the Distribution Agent shall be authorized and entitled to recognize only those Holders of Claims listed on the Claims Register as of the close of business on such Distribution Record Date. If a Claim is transferred 20 or fewer days before the applicable Distribution Record Date, the Distribution Agent shall make distributions to the transferee only to the extent practical, and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

7.3.2 Delivery of Distributions in General

Except as otherwise provided herein, the Distribution Agent, at the direction of the Plan Administrator, shall make all Distributions required under the Plan to Holders of Allowed Claims. Except as otherwise provided herein, and notwithstanding any authority to the contrary, Distributions to Holders of Allowed Claims shall be made to Holders of record as of the applicable Distribution Record Date by the Distribution Agent, as appropriate: (a) to the signatory set forth on any of the Proofs of Claim filed by such Holder or other representative identified therein (or at the last known address of such Holder if no Proof of Claim is filed or if the Debtors, the Plan Administrator or the Distribution Agent have been notified in writing of a change of address); (b) at the address set forth in any written notice of change of address delivered to the Notice and Claims Agent; (c) at the address set forth in any notice filed pursuant to Bankruptcy Rule 3001(e); or (d) at the address reflected in the Schedules if no Proof of Claim has been filed and the Notice and Claims Agent has not received a written notice of a change of address. The Debtors, the Plan Administrator, the Distribution Agent, the Wind Down Entities and the Notice and Claims Agent shall not incur any liability whatsoever on account of the delivery of any Distributions under the Plan.

In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Allowed Claims shall not be entitled to interest, dividends or accruals on the Distributions provided for in the Plan, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

7.3.3 Foreign Currency Exchange Rate

Except as otherwise provided herein, an order of the Bankruptcy Court or as agreed to by the Holder and the Debtors or the Plan Administrator, as applicable, any Claim

asserted in a currency other than U.S. Dollars shall be automatically deemed converted to the equivalent U.S. Dollars at the Exchange Rate.

7.4. Distribution Agent

The Plan Administrator shall have the authority, in its sole discretion, to enter into an agreement with a Distribution Agent to facilitate the Distributions required under the Plan. To the extent the Plan Administrator determines to utilize a Distribution Agent to facilitate the Distributions, such Distribution Agent would first be required to: (a) affirm its obligation to facilitate the prompt distribution of any documents; (b) affirm its obligation to facilitate the prompt distribution of any recoveries or Distributions required under the Plan; and (c) waive any right or ability to set off, deduct from or assert any Lien or other encumbrance against the Distributions required under the Plan to be distributed by such Distribution Agent.

The Plan Administrator shall pay to the Distribution Agent all of its reasonable and documented fees and expenses without the need for any approvals, authorizations, actions or consents of the Bankruptcy Court or otherwise. The Distribution Agent shall submit detailed invoices to the Plan Administrator for all fees and expenses for which the Distribution Agent seeks reimbursement, and the Plan Administrator shall pay those amounts that it, in its sole discretion, deems reasonable, and shall object to those fees and expenses, if any, that the Plan Administrator deems to be unreasonable. In the event that the Plan Administrator objects to all or any portion of the amounts requested to be reimbursed in the Distribution Agent's invoice, the Plan Administrator and the Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees and/or expenses. In the event that the Plan Administrator and the Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, either party shall be authorized to move to have such dispute heard by the Bankruptcy Court.

7.5. Fractional and *De Minimis* Distributions

Notwithstanding anything herein to the contrary, the Plan Administrator and the Distribution Agent shall not be required to make Distributions in Cash or payments of less than $10. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than $10 shall be forever barred from asserting such Claim against the Debtors, the Estates, the Plan Administrator, the Wind Down Entities or any of their property.

7.6. Undeliverable Distributions

In the event that any Distribution to any Holder is returned as undeliverable, or no address for such Holder is found in the Debtors' or Notice and Claims Agent's records, no further Distribution to such Holder shall be made unless and until the Plan Administrator or the Distribution Agent is notified in writing of the then-current address of such Holder, at which time such Distribution shall be made to such Holder not less than 30 days thereafter. Undeliverable Distributions shall remain in the possession of the Plan Administrator or the Distribution Agent until such time as such Distribution becomes deliverable or such Distribution reverts to the relevant Wind Down Entity or is cancelled pursuant to Section 7.7 and shall not be

supplemented with any interest, dividends or other accruals of any kind. Nothing contained herein shall require the Plan Administrator to attempt to locate any Holder of an Allowed Claim whose Distribution is declared an undeliverable or Unclaimed Distribution.

7.7. Reversion

Any Distribution under the Plan, including Distributions made by the Plan Administrator or the Distribution Agent in accordance with Section 7.4, that is an Unclaimed Distribution for a period of six months thereafter, shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, and such Unclaimed Distribution shall revest in the relevant Wind Down Entity as Plan Assets with respect to Unclaimed Distributions on account of Claims, *provided*, *however*, that the Plan Administrator and the Distribution Agent shall use commercially reasonable efforts to notify the Holder of such Unclaimed Distribution within three months of the applicable Distribution Date. Any Distribution that is not made pursuant to Section 7.5 shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revest in the relevant Wind Down Entity as Plan Assets pursuant to this Section 7.7. Upon revesting pursuant to this Section 7.7, the Claim of any Holder or its successors and assigns with respect to such property shall be cancelled and forever barred, notwithstanding any applicable federal or state escheat, abandoned or unclaimed property laws to the contrary. If any Unclaimed Distribution revests in any Wind Down Entity as Plan Assets pursuant to this Section 7.7 after the Final Distribution is made, the Plan Administrator shall not be required to make any subsequent Distributions to Holders of Allowed Claims or Interests under the Plan.

7.8. Surrender of Cancelled Instruments or Securities

Except as otherwise provided in the Plan, on the Effective Date, or as soon as reasonably practicable thereafter, each holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent. Subject to the foregoing sentence, regardless of any actual surrender of a Certificate, the deemed surrender shall have the same effect as if its Holder had actually surrendered such Certificate, and such Holder shall be deemed to have relinquished all rights, Claims and Interests with respect to such Certificate. Notwithstanding the foregoing paragraph, this Section 7.8 shall not apply to any Claims reinstated pursuant to the terms of the Plan.

7.9. Setoffs

Except as otherwise provided herein, a Final Order of the Bankruptcy Court, or as agreed to by the Holder and the Debtors or the Plan Administrator, as applicable, pursuant to the Bankruptcy Code (including section 553), applicable non-bankruptcy law, or such terms as may be agreed to by the Holder and the Debtors or the Plan Administrator, as applicable, may, without any further notice to, or action, order or approval of the Bankruptcy Court, set off against any Allowed Claim and the Distributions to be made on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any claims, rights and Causes of Action of any nature that such Debtor or the Plan Administrator, as applicable, may hold against the Holder of such Allowed Claim, to the extent such claims, rights or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided* that neither the failure to

effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Debtor or the Plan Administrator of any such Claims, rights and Causes of Action that such Debtor or the Plan Administrator may possess against such Holder. In no event shall any Holder of a Claim be entitled to set off any Claim against any Claim, right, or Cause of Action of a Debtor or the Plan Administrator, as applicable, unless such Holder has filed a Proof of Claim in these Chapter 11 Cases by the applicable Claims Bar Date preserving such setoff and a Final Order of the Bankruptcy Court has been entered, authorizing and approving such setoff.

7.10. No Interest on Claims

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of any Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final Distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

7.11. No Payment over the Full Amount

In no event shall a Holder of an Allowed Claim receive more than the full payment of such Allowed Claim. To the extent any Holder has received payment in full with respect to an Allowed Claim, such Allowed Claim shall be deemed satisfied and expunged from the claims registry without an objection to such Claim having been filed and without any further notice to or action, order or approval of the Bankruptcy Court. To the extent that a Holder of an Allowed Claim receives a Distribution on account of such Claim and receives payment from a party that is not a Debtor, the Plan Administrator or the Distribution Agent on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Plan Administrator or the Distribution Agent, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Plan Administrator annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

7.12. Anti-Double Dip

The Plan Administrator may require any Holder of any Claim to submit satisfactory evidence that such Holder has not requested or received compensation for the same losses underlying such Claim in connection with any return of customer property procedures or other judicial or administrative proceeding, including, without limitation, any proceedings with respect to: [(a) FTX Australia, (b) FTX DM, (c) FTX Turkey, (d) SNG Investments, (e) FTX Europe AG, (f) FTX EU Ltd., (g) Quoine PTE Ltd. or (h) FTX Japan K.K.]. The Plan Administrator may, and may direct the Distribution Agent to, withhold any Distributions on such Claim until such time as satisfactory evidence is obtained or appropriate arrangements are in place that ensure no Holder receives more than any other Holder under the Plan, taking into account potential recoveries of all Holders.

As a condition to receiving any Distribution under the Plan, the Plan Administrator may require Holders of Allowed Dotcom Customer Entitlement Claims, U.S. Customer Entitlement Claims, NFT Customer Entitlement Claims, General Unsecured Claims, Dotcom Convenience Claims, U.S. Convenience Claims or General Convenience Claims to irrevocably and unconditionally assign and transfer to the Plan Administrator all right, title and interest in any claim or Cause of Action for the same losses that has been or may be made or asserted in any return of customer property procedures or other judicial or administrative proceeding relating to any Debtor or any Affiliate of the Debtors, including, without limitation, [(a) FTX Australia, (b) FTX DM, (c) FTX Turkey, (d) SNG Investments, (e) FTX Europe AG, (f) FTX EU Ltd., (g) Quoine PTE Ltd. or (h) FTX Japan K.K.].

7.13. Compliance with Tax Requirements

In connection with the Plan, to the extent applicable, the Debtors, the Plan Administrator and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any tax law, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Plan Administrator and the Distribution Agent shall be authorized to take all actions reasonably necessary or appropriate to comply with such withholding and reporting requirements, including withholding in kind, liquidating a portion of the Distributions to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions or establishing any other mechanisms that are reasonable and appropriate. For purposes of the Plan, any withheld amount (or property) shall be treated as if paid to the applicable Holder. The Plan Administrator reserves the right to allocate all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and encumbrances. Distributions in full or partial satisfaction of Allowed Claims shall be allocated first to trust fund-type taxes, then to other taxes and then to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that has accrued on such Claims.

7.14. Tax Identification, KYC and OFAC Certifications

Any Holder entitled to receive any Distribution under the Plan shall, upon request, deliver to the Distribution Agent or such other Entity designated by the Plan Administrator: (a) a completed IRS Form W-9 or appropriate IRS Form W-8, as applicable; (b) a certification that the Holder is not a Person or Entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons; and (c) know your customer information of the Holder of such Claim, which (i) for individuals, may include, among other things, full name including any alias, date of birth, address and proof of address, identification and identification-related documents, nationality, phone number, email address, occupation, bank account information or wallet address, social security number (for U.S. citizens) and facial liveness and (ii) for institutional Holders, may include, among other things, company name, registration information, tax identification number, principal business address and phone number, business email address, information on the nature of the business and principal business activity, entity size, source of wealth/source of funds, annual revenue/profit, authorized signer, identity of ultimate beneficial

owners, identity of directors and/or members of management, bank account information or wallet address and, for any ultimate beneficial owners, directors or members of management, similar identification information and records as are collected for individual Holders who are natural Persons (collectively, the "Pre-Distribution Requirements"). If a request for Pre-Distribution Requirements has not been satisfied within 30 days thereafter, a second request shall be sent to such Holder. If the Holder fails to comply with the Pre-Distribution Requirements before the date that is 60 days after a second request is made, such Holder shall be deemed to have forfeited its right to receive Distributions, and shall be forever barred and enjoined from asserting any right to Distributions made prior to the Plan Administrator receiving its executed Pre-Distribution Requirements. Any Distributions that are forfeited pursuant to this provision shall revest in the Wind Down Entities as Plan Assets.

8. CLAIMS ADMINISTRATION PROCEDURES

8.1. Objections to Claims

Any objections to Claims (other than Administrative Claims) shall be filed on or before the Claims Objection Deadline. The Claims Objection Deadline may be extended by the Plan Administrator, by filing a motion to extend on or before the Claims Objection Deadline. The Plan Administrator shall have standing to object to Claims. Except as otherwise set forth in the Plan, after the Effective Date, the Plan Administrator and each Wind Down Entity shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim immediately before the Effective Date.

8.2. Estimation of Claims

Except as may be provided in the Digital Assets Estimation Order, before or after the Effective Date, the Debtors or the Plan Administrator, as applicable, may, within their reasonable discretion, at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not yet been the subject of a Final Order, shall be deemed to be estimated at zero dollars unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including, but not limited to, for purposes of Distributions), and the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court or under the Plan. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation of such Claim unless the Holder of such Claim has filed a motion with the Bankruptcy Court requesting the right to seek such reconsideration on or before 20 calendar days after the date such Claim is estimated by the Bankruptcy Court.

8.3. Expungement and Disallowance of Claims

8.3.1 Paid, Satisfied, Amended, Duplicated or Superseded Claims

Any Claim or Interest that has been paid, satisfied, amended, duplicated (by virtue of the substantive consolidation provided for under the Plan or otherwise), superseded or otherwise dealt with or treated in the Plan, may be adjusted or expunged on the Claims Register at the direction of the Plan Administrator without the Plan Administrator having to file an objection,

application, motion, complaint or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order or approval of the Bankruptcy Court.

8.3.2 Claims by Persons from Whom Property Is Recoverable

Unless otherwise agreed to by the Debtors, the Plan Administrator or ordered by the Bankruptcy Court, any Claims held by any Person or Entity from which property is recoverable under section 542, 543, 550 or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and any Holder of such Claim may not receive any Distributions on account of such Claim until such time as such Cause of Action against that Person or Entity has been resolved.

8.4. Amendments to Proofs of Claim

On or after the Effective Date, a Proof of Claim may not be amended (other than solely to update or correct the name or address of the Holder of such Claim) without the prior authorization of the Bankruptcy Court or the Plan Administrator, and any such amended Proof of Claim filed without such prior authorization shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

8.5. No Distributions Pending Allowance

If an objection to the amount, validity, priority or classification of a Claim or a portion thereof is filed or is intended to be filed as set forth in this Article 8 or a Claim otherwise remains a Disputed Claim, except as otherwise provided in a Final Order of the Bankruptcy Court, no payment or Distribution provided under the Plan shall be made on account of such Claim or portion thereof, as applicable, unless and until such Disputed Claim becomes an Allowed Claim or is otherwise settled or resolved.

8.6. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the applicable provisions of the Plan.

8.7. Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date the Plan Administrator shall have the sole authority (subject to the terms of the Plan Administration Agreement) to (a) file, withdraw or litigate to judgment objections to Claims, (b) settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court, (c) administer and adjust, or cause to be administered and adjusted, the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court and (d) determine, without the need for notice to or action, order or approval of the Bankruptcy Court, that a Claim subject to any Proof of Claim that is filed is Allowed. Nothing in this Section 8.7 shall limit the ability under the

Bankruptcy Code of any party-in-interest to object to any Claim prior to the Claims Objection Deadline unless otherwise ordered by the Bankruptcy Court.

8.8. Claims Paid or Payable by Third Parties

The Debtors or the Plan Administrator, as applicable, shall reduce a Claim, and such Claim (or portion thereof) shall be disallowed without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment on account of such Claim from a party that is not a Debtor or the Plan Administrator. To the extent a Holder of a Claim receives a Distribution on account of such Claim and also receives payment from a party that is not a Debtor or the Plan Administrator on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the Distribution to the applicable Debtor, the applicable Wind Down Entity, or the Plan Administrator, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Allowed Claim as of the applicable Distribution Date.

9. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN

9.1. Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of this Article 9.

(a) Confirmation Order. The Confirmation Order shall have been entered in a form and substance reasonably acceptable to the Debtors and there shall not be a stay or injunction in effect with respect thereto.

(b) Professional Fee Escrow Account. The Debtors shall have established and funded the Professional Fee Escrow Account in accordance with Section 3.4.2.

(c) Professional Fee Payments. All professional fees and expenses of the Debtors and the Official Committee as of the Effective Date that were due and payable under an order of the Bankruptcy Court shall have been paid in full, other than any Professional Claims subject to approval by the Bankruptcy Court.

(d) Plan Documents. The Plan, Plan Supplement, Confirmation Order and all documents related thereto shall be in form and substance reasonably acceptable to the Debtors and the Supporting Parties, and any conditions precedent thereto shall have been satisfied, waived or satisfied contemporaneously with the occurrence of the Effective Date.

(e) Necessary Documents. All actions, documents, certificates and agreements necessary to implement the Plan shall have been effected or executed and delivered, as applicable.

(f) Necessary Authorizations. All authorizations, consents, regulatory approvals, rulings or documents that are necessary to implement and effectuate the Plan as of the Effective Date shall have been received, waived or otherwise resolved.

(g) Governmental Action. No governmental entity or federal or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law or order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Plan or any of the other transactions contemplated hereby and no governmental entity shall have instituted any action or proceeding (which remains pending at what would otherwise be the Effective Date) seeking to enjoin, restrain or otherwise prohibit consummation of the transactions contemplated by the Plan.

9.2. Waiver of Conditions

The Debtors may, in consultation with the Supporting Parties, waive conditions to the occurrence of the Effective Date set forth in this Article 9 at any time without further notice, leave or order the Bankruptcy Court or any formal action other than proceeding to consummate the Plan.

9.3. Simultaneous Transactions

Except as otherwise expressly set forth in the Plan, the Confirmation Order or a written agreement by the Debtors, each action to be taken on the Effective Date shall be deemed to occur simultaneously as part of a single transaction.

9.4. Effect of Non-Occurrence of the Effective Date

If the Effective Date does not occur by [•] or such later date as the Debtors determine, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall constitute a waiver or release of any claims by or Claims against or Interests in the Debtors, prejudice in any manner the rights of the Debtors or any other Person, or constitute an admission, acknowledgment, offer or undertaking by the Debtors or any Person.

9.5. Notice of Effective Date

As soon as practicable after the Effective Date has occurred, the Plan Administrator shall file with the Bankruptcy Court a notice specifying the Effective Date.

10. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

10.1. Subordinated Claims

The Debtors reserve the right to reclassify or modify the treatment of any Allowed Claim or Interest in accordance with any contractual, legal or equitable subordination rights, except to the extent the Debtors have otherwise agreed in writing with the Holder of the applicable Allowed Claim or Interest.

10.2. Discharge of Claims and Termination of Interests

Pursuant to and to the fullest extent permitted by the Bankruptcy Code, except as otherwise specifically provided in the Plan or the Confirmation Order, the treatment of Claims and Interests under the Plan shall be in full and final satisfaction, settlement, release, discharge and termination, as of the Effective Date, of all Claims of any nature whatsoever, whether known or unknown, against, and Interests in, the Debtors, any property of the Estates, the Plan Administrator or any property of the Wind Down Entities, including all Claims of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim or Interest based upon such Claim, debt, right, liability, obligation or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such Claim, debt, right, liability, obligation or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim, liability, obligation or Interest has accepted the Plan. Except as otherwise provided herein, any default by the Debtors or their Affiliates with respect to any Claim that existed immediately prior to or on account of the filing of these Chapter 11 Cases shall be deemed cured on the Effective Date.

10.3. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and cancelled, and all of the rights, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Wind Down Entities and their successors and assigns. Any Holder of such mortgage, deed of trust, Lien, pledge or other security interest (and the applicable agents for such holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such holder), and to take such actions as may be reasonably requested by the Plan Administrator to evidence such release, including the execution, delivery and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

10.4. Debtors' Release

Except as otherwise specifically provided in the Plan with respect to the Preserved Potential Claims, for good and valuable consideration, including the service of the Released Parties to facilitate the administration of the Chapter 11 Cases and the implementation of the orderly liquidation contemplated by the Plan, on and after the Effective Date, to the fullest extent permitted by applicable law, the Released Parties are hereby conclusively, absolutely, unconditionally, irrevocably and forever released, waived and discharged by the Debtors, the Plan Administrator and the Estates, including any successor to, or assignee of the Debtors or any Estate representative, from all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of a Debtor, and its successors, assigns and representatives, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or fixed, existing or hereafter arising, in law, at equity or otherwise, whether for indemnification, tort, breach of contract, violations of federal or state securities laws or otherwise, including those that any of the Debtors, the Plan Administrator or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or any other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Estates, the conduct of the businesses of the Debtors, these Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any Security of the Debtors, the release of any mortgage, lien or security interest, the distribution of proceeds, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration of Claims and Interests prior to or during these Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Plan Supplement, the Disclosure Statement or, in each case, related agreements, instruments or other documents, any action or omission with respect to Intercompany Claims, any action or omission as an officer, director, agent, representative, fiduciary, controlling person, member, manager, affiliate or responsible party, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date of the Plan, other than claims or liabilities arising out of or relating to any act or omission of a Released Party to the extent such act or omission is determined by a Final Order to have constituted gross negligence, willful misconduct, fraud, or a criminal act; *provided* that the release under this Section 10.4 shall not apply to any Excluded Party, nor to any Preserved Potential Claims to the extent such Preserved Potential Claims are brought by and for the benefit of the Wind Down Entities with the approval of the Plan Administrator, unless otherwise specifically provided in the Plan or the Plan Supplement. Nothing in the Plan or Confirmation shall affect any releases previously granted or approved by the Court.

10.5. Voluntary Release by Holders of Claims and Interests

For good and valuable consideration, including the service of the Released Parties to facilitate the administration of the Chapter 11 Cases, the implementation of the Plan, and the distribution of proceeds, on and after the Effective Date, to the fullest extent permitted by applicable law, the Releasing Parties (regardless of whether a Releasing Party is a Released Party) shall be deemed to conclusively, absolutely, unconditionally,

irrevocably and forever release, waive and discharge the Released Parties of any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of a Debtor, and its successors, assigns and representatives, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or fixed, existing or hereafter arising, in law, at equity or otherwise, whether for indemnification, tort, breach of contract, violations of federal or state securities laws or otherwise, including those that any of the Debtors, the Plan Administrator or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or any other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Estates, the conduct of the businesses of the Debtors, these Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the Plan Supplement or the Disclosure Statement, the administration of Claims and Interests prior to or during these Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Plan Supplement, the Disclosure Statement or, in each case, related agreements, instruments or other documents, any action or omission with respect to Intercompany Claims, any action or omission as an officer, director, agent, representative, fiduciary, controlling person, member, manager, affiliate or responsible party, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date of the Plan, other than claims or liabilities arising out of or relating to any act or omission of a Released Party to the extent such act or omission is determined by a Final Order to have constituted gross negligence, willful misconduct, fraud, or a criminal act. Nothing in this Section 10.5 shall cause the release of (a) any Excluded Party nor (b) any Preserved Potential Claims that are otherwise transferred to, and may be prosecuted by, the Wind Down Entity pursuant to the terms of the Plan.

10.6. Scope of Releases

Each Person providing releases under the Plan, including the Debtors, the Plan Administrator, the Estates and the Releasing Parties, shall be deemed to have granted the releases set forth in the Plan notwithstanding that such Person may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person expressly waives any and all rights that it may have under any statute or common law principle which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist at the time of execution of such release.

10.7. Exculpation

Notwithstanding anything herein to the contrary, as of the Effective Date, the Debtors and their directors, officers, employees, attorneys, investment bankers, financial advisors, restructuring advisors and other professional advisors, representatives and agents will be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section

1125(e) of the Bankruptcy Code and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with the solicitation.

As of the Effective Date, to the fullest extent permitted by applicable law, and without affecting or limiting the releases set forth in Section 10.4 or Section 10.5 of the Plan, the Exculpated Parties shall neither have nor incur any liability to any Entity for any act or omission in connection with, related to, or arising out of these Chapter 11 Cases, including (a) the operation of the Debtors' businesses during the pendency of these Chapter 11 Cases; (b) the administration and adjudication of Claims and Interests during these Chapter 11 Cases; (c) formulating, negotiating, preparing, disseminating, implementing, administering, confirming and/or effecting the Plan, the Disclosure Statement, the Plan Supplement or any related contract, instrument, release or other agreement or document created or entered into in connection with the Chapter 11 Cases (including the solicitation of votes for the Plan and other actions taken in furtherance of Confirmation and Consummation of the Plan, the trading or sale of cryptocurrencies and tokens in connection with the Chapter 11 Cases, the offer and issuance of any securities under or in connection with the Plan and the distribution of property, Digital Assets, or tokens under the Plan); or (d) any other transaction, agreement, event, or other occurrence related to these Chapter 11 Cases taking place on or before the Effective Date, other than liability resulting from any act or omission that is determined by Final Order to have constituted gross negligence, willful misconduct, fraud or a criminal act. Notwithstanding anything contained herein to the contrary, the foregoing exculpation does not exculpate any Excluded Party. Nothing in the Plan or Confirmation shall affect any exculpation orders previously granted or approved by the Court.

10.8. Injunction

Except as otherwise expressly provided in the Plan or Confirmation Order with respect to Preserved Potential Claims, the satisfaction and release pursuant to this Article 10 shall also act as a permanent injunction against any Person who has held, holds or may hold Claims, Interests or Causes of Action from (a) commencing or continuing any action to collect, enforce, offset, recoup or recover with respect to any Claim, liability, obligation, debt, right, Interest or Cause of Action released, settled or exculpated under the Plan or the Confirmation Order to the fullest extent authorized or provided by the Bankruptcy Code, including to the extent provided for or authorized by sections 524 or 1141 thereof, (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order on account of or in connection with or with respect to any such Claim or Interest; (c) creating, perfecting or enforcing any encumbrance of any kind on account of or in connection with or with respect to any such Claims or Interests; and (d) asserting any right of setoff, subrogation or recoupment of any kind on account of or in connection with or with respect to any such Claim or Interest, notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has or intends to preserve any right of setoff pursuant to applicable law or otherwise, against any Plan Asset, the Wind Down Entities, any Holder of a Claim or Interest or any initial or subsequent transferee. Notwithstanding anything to the contrary in the Plan, all Holders of Claims, Interests or Causes of Action are enjoined from interfering with the Distributions

contemplated by the Plan and from asserting any Claim or Cause of Action expressly preserved and vested exclusively in the Wind Down Entities as of the Effective Date.

10.9. Limitations on Exculpations and Releases

Notwithstanding anything to the contrary herein, none of the releases or exculpations set forth herein shall operate to waive or release any obligation or Causes of Action of any Person or Entity: (a) arising under any contract, instrument, agreement, release or document delivered pursuant to the Plan or documents, agreements or instruments executed in connection therewith, including all post-Effective Date obligations or (b) expressly set forth in and preserved by the Plan, the Plan Supplement or related documents, including the Preserved Potential Claims.

11. MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN

11.1. Modification of Plan

Subject to the limitations contained in the Plan: (a) the Debtors reserve the right, in consultation with the Supporting Parties and in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications with respect to the treatment of Classes 5A, 5B, 5C, 6, 7A, 7B, 7C, 8B, 8C and 11 to satisfy section 1129(b) of the Bankruptcy Code and (b) after the entry of the Confirmation Order, the Debtors or the Plan Administrator, as applicable, may, in consultation with the Supporting Parties and upon order of the Bankruptcy Court, (i) amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code or (ii) remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

11.2. Effect of Confirmation on Modification

Entry of a Confirmation Order shall mean that all modifications and amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code, and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

11.3. Revocation of Plan

The Debtors reserve the right, in consultation with the Supporting Parties, to revoke or withdraw the Plan prior to the Effective Date and to file subsequent plans of reorganization or liquidation. If the Debtors revoke or withdraw the Plan, if the Confirmation Order is not entered or the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Causes of Action, Claims by or Claims against, or any Interests in, any Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission acknowledgement, offer or undertaking of any sort by the Debtors or any other Entity.

12. RETENTION OF JURISDICTION

12.1. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain its existing exclusive jurisdiction over all matters arising in or out of, or related to, these Chapter 11 Cases or the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any General Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount or allowance of Claims or Interests;

(b) Decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

(c) Resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is a party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including any disputes regarding cure obligations; and (ii) any dispute regarding whether a contract or lease is, or was, executory or expired;

(d) Ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the Plan and adjudicate any and all disputes from, or relating to Distributions under the Plan;

(e) Adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and Causes of Action, including the Preserved Potential Claims, and grant or deny any applications, involving a Debtor that may be pending before the Bankruptcy Court on the Effective Date;

(f) Adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;

(g) Enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, Plan Supplement or the Disclosure Statement;

(h) Enter, adjudicate and enforce any order for the sale of property pursuant to section 363, 1123 or 1146(a) of the Bankruptcy Code;

(i) Adjudicate, decide or resolve any and all disputes as to the ownership of any Claim or Interest;

(j) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with enforcement of the Plan;

(k) Resolve any cases, controversies, suits, disputes or Causes of Action with respect to the existence, nature and scope of the releases, injunctions and other provisions contained in the Plan, and enter such orders as may be necessary or appropriate to implement and enforce such releases, injunctions and other provisions;

(l) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(m) Determine any other matters that may arise in connection with or relate to the Plan, the Plan Supplement, the Plan Administration Agreement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Plan Supplement or the Disclosure Statement;

(n) Enter an order or final decree concluding or closing these Chapter 11 Cases;

(o) Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

(p) Hear and determine disputes, cases, controversies or Causes of Action arising in connection with the interpretation, implementation or enforcement of the Plan, including the releases or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(q) Hear and determine all disputes relating to any liability arising out of the termination of employment or the termination of any employee or retirement benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(r) Enforce and adjudicate all orders previously entered by the Bankruptcy Court; and

(s) Hear any other matter not inconsistent with the Bankruptcy Code, the Plan or the Confirmation Order.

13. MISCELLANEOUS PROVISIONS

13.1. Immediate Binding Effect

Notwithstanding Bankruptcy Rule 3020(e), 6004(g) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Plan Administrator and any and all Holders of Claims and Interests (irrespective of whether Holders of such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases and injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

13.2. Additional Documents; Further Assurances

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Plan Administrator and all Holders of Claims or Interests receiving Distributions pursuant to the Plan and all other parties-in-interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

13.3. Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by a Debtor or any other Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) any Debtor with respect to the Holders of Claims or Interests or any other Entity or (b) any Holder of a Claim or an Interest or any other Entity prior to the Effective Date.

13.4. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

13.5. Term of Injunction or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in these Chapter 11 Cases pursuant to section 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

13.6. Entire Agreement

On the Effective Date, the Plan and the Plan Supplement shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations with respect to the subject matter hereof and thereof, all of which have become merged and integrated into the Plan.

13.7. Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents may be obtained upon written request to the Debtors' counsel at the address below or by downloading such exhibits and documents from the website of the Debtors' Notice and Claims Agent, at https://restructuring.ra.kroll.com/FTX/ or the Bankruptcy Court's electronic docket for the Debtors' Chapter 11 Cases at https://.ecf.deb.uscourts.gov/ (a PACER login and password are required and can be obtained through the PACER Service Center at www.pacer.uscourts.gov). In addition, copies of such exhibits and documents may be requested from the Notice and Claims Agent at (888) 482-0049 (U.S./Canada) or (646) 440-4176 (International).

13.8. Nonseverability of Plan Provisions upon Confirmation

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (c) nonseverable and mutually dependent.

13.9. Dissolution of Official Committee

On the Effective Date, the Official Committee shall dissolve and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided* that the Official Committee will stay in existence solely for the limited purpose of (a) applications filed pursuant to sections 330 and 331 of the Bankruptcy Code, (b) motions, litigation or appeals seeking enforcement of the provisions of the Plan or under the Confirmation Order, and (c) motions, litigation or appeals pending on the Effective Date in which the Committee is a party; *provided, further*, that, with respect to pending appeals and related proceedings, the Official Committee shall continue to comply with sections 327, 328, 329, 330, 331 and 1103 of the Bankruptcy Code and the Professional Fee Order in seeking compensation for services rendered.

13.10. Termination of Fee Examiner's Appointment

Upon the resolution of all applications filed pursuant to sections 330 and 331 of the Bankruptcy Code by professionals subject to review by the Fee Examiner, the Fee Examiner's appointment shall terminate, and the Fee Examiner shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases.

13.11. Debtors' Directors and Officers

On the Effective Date, each of the Debtors' directors and officers shall be released and discharged from their duties and terminated automatically without the need for any corporate action or approval and without the need for any corporate filings and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

13.12. Post-Confirmation Operating Reports

The Plan Administrator, on behalf of the Wind Down Entities, shall file and serve on the U.S. Trustee quarterly reports of the disbursements made pursuant to the Plan, until each of the Chapter 11 Cases are converted, dismissed or closed by entry of a final decree. Any such reports shall be prepared consistent with (both in terms of content and format) the applicable Bankruptcy Court and the U.S. Trustee's guidelines for such matters.

13.13. Closing of Chapter 11 Cases

The Plan Administrator shall, promptly after the full administration of these Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close these Chapter 11 Cases. The Plan Administrator may also, in its reasonable discretion, file the necessary documents to close any individual Debtor's case at any appropriate time.

13.14. Conflicts

Except as set forth in the Plan, to the extent that any provisions of the Disclosure Statement, the Plan Supplement or any order of the Bankruptcy Court (other than the Confirmation Order) referenced in the Plan (or any exhibits, appendices, supplements or amendments to any of the foregoing), conflicts with or is in any way inconsistent with any provision of the Plan, the Plan Supplement shall govern and control. To the extent any provision of the Disclosure Statement, the Plan Supplement or any other document referenced in the Plan (or any exhibits, appendices, supplements or amendments to any of the foregoing) conflicts with or is in any way inconsistent with the Confirmation Order, the Confirmation Order shall govern and control.

13.15. No Stay of Confirmation Order

The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

13.16. Waiver or Estoppel

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement or papers filed with the Bankruptcy Court prior to the Confirmation Date.

13.17. Post-Effective Date Service

After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that have filed renewed requests for service after the Effective Date.

13.18. Notices

All notices, requests, pleadings and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

(a) If to the Debtors, to:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attn: Andrew G. Dietderich
James L. Bromley
Brian D. Glueckstein
Alexa J. Kranzley

and

Landis Rath & Cobb LLP
919 Market Street, Suite 1800
Wilmington, Delaware 19801
Attn: Adam Landis
Kimberly A. Brown
Matthew R. Pierce

(b) If to the Official Committee, to:

Paul Hastings LLP
200 Park Avenue
New York, NY 10166
Attn: Kristopher M. Hansen

Kenneth Pasquale
Erez E. Gilad
Gabriel E. Sasson

and

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, DE 19801
Attn: Matthew B. Lunn
Robert F. Poppiti, Jr.

(c) If to the U.S. Trustee, to:

United States Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 N. King Street, Room 2207, Lockbox 35
Wilmington, DE 19801
Attn: Benjamin A. Hackman
Linda Richenderfer

Dated: December 16, 2023
Wilmington, Delaware

FTX Trading Ltd., on behalf of itself and all other Debtors

By: *DRAFT*

Name: John J. Ray III

Title: Chief Executive Officer and Chief Restructuring Officer

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

FIFTH AFFIDAVIT OF BRIAN SIMMS KC (Sanction of Global Settlement Agreement)

2022
COM/com/00060

LENNOX PATON
Chambers
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Blake Road and West Bay Street
Nassau, New Providence
The Bahamas
Attorneys for the Joint Official Liquidators of FTX Digital Markets Ltd. ("In Official Liquidation")