

Hearing Date: TBD
Objection Deadline: TBD

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Proposed Counsel to the Debtors and Debtors in Possession

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

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

**DEBTORS' MOTION TO SET LIMITED BAR DATE OF SEPTEMBER 3, 2021
FOR VRG, VARIGLOG AND HJDK LITIGATION CLAIMS**

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



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in these chapter 11 cases (the “**Chapter 11 Cases**”) hereby submit this motion (the “**Motion**”) pursuant to section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), rule 3003(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), rule 3003-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”) and the United States Bankruptcy Court for the Southern District of New York’s Procedural Guidelines for Filing Requests for Orders to set the Last Date for Filing Proofs of Claims (the “**Bar Date Guidelines**”) for the entry an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”), (a) establishing September 3, 2021 as the deadline for filing proofs of claim asserting the Litigation Claims (defined below) against the Debtors and (b) approving the form and manner of notice thereof. In support of this Motion, the Debtors rely on the *Declaration of Matthew Doheny, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions in Compliance with Local Rule 1007-2* filed concurrently herewith (the “**Doheny Declaration**”).² In further support of this Motion, the Debtors respectfully state as follows:

Preliminary Statement

1. By this Motion, Debtors request that the Court establish **September 3, 2021** as the bar date by which three litigation claimants must file proofs of claim, in order to permit the Debtors to promptly object to such claims, the disallowance of which is a condition to the effectiveness of the Debtors’ proposed Plan. All three litigations are foreign proceedings that stem from certain of the Debtors’ historical investment activity in Brazil. Regardless of outcome, none of them could result in a judgment that is enforceable against Debtors and their assets in the United States, as a

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Doheny Declaration.

matter of U.S. law. Accordingly, the setting of a limited bar date to facilitate the expedited resolution of these litigation claims in conjunction with plan confirmation is both appropriate and efficient. Specifically, the Debtors propose that the litigation claimants be required to file proofs of claim by September 3, 2021, which will provide ample time for briefing by parties-in-interest prior to the adjudication of the Debtors' objections to such claims at the confirmation hearing. This prompt bar date is appropriate because it is necessary for the Debtors' chapter 11 plan to be timely confirmed and become effective. *Cf. In re Garrett Motion Inc.*, Case No. 20-12212 (MEW) (Bankr. S.D.N.Y. Dec. 11, 2020) (requiring Honeywell to file its proof of claim prior to a general bar date in order to permit timely estimation of Honeywell's claim in connection with plan confirmation).³

2. By way of background to the litigation claims in issue, in 2005, Debtors MatlinPatterson Global Opportunities Partners II L.P. and MatlinPatterson Global Opportunities Partners (Cayman) II L.P. (the "**MP Funds**") established Volo Logistics LLC ("**Volo LLC**"), a Delaware Limited Liability Company, to serve as an investment vehicle for pursuing investment opportunities in the Brazilian aviation industry. Doheny Decl. at ¶ 36.

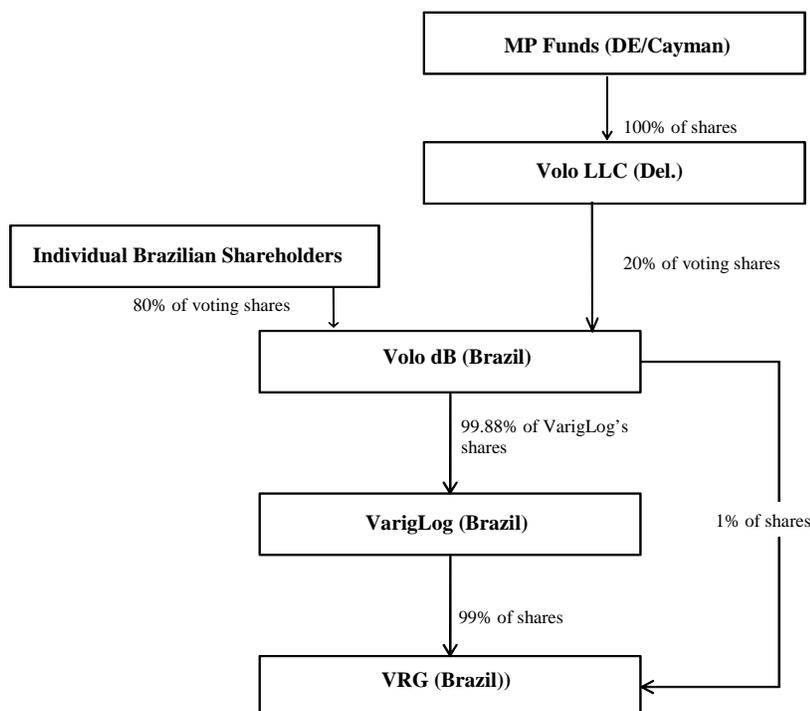
3. Volo LLC and three Brazilian individual investors (the "**Brazilian Shareholders**") formed a subsidiary company in Brazil called Volo do Brasil S.A. ("**Volo dB**"). The Brazilian Shareholders owned and controlled 80% of Volo dB's voting stock and Volo LLC owned the remaining 20%. *Id.*

4. In early 2006, Volo dB acquired Varig Logistica S.A. ("**VarigLog**"), a Brazilian cargo airline. *Id.* at ¶ 37. Later in 2006, VarigLog and Volo dB purchased the passenger airline business of VarigLog's former parent company. The passenger airline business was purchased via

³ The Debtors do not anticipate establishing a general bar date for other creditors.

a Brazilian special purpose vehicle that was later renamed VRG. VRG became a subsidiary of Volo dB. *Id.*

5. The following depicts the MP Funds' investment structure in Brazil, consistent with how U.S. private equity firms acquire, hold and capitalize foreign, portfolio-company investments. *Id.*:



6. The MP Funds' foray into the Brazilian aviation industry was not a successful endeavor. The investment generated a substantial loss and has led to years of unwarranted and meritless litigation against the MP Funds in Brazil. Indeed, the MP Funds continue to be drawn into new and different (and unmeritorious) proceedings relating to their now historic investment in the Brazilian aviation industry, including all-new litigations commenced during 2019 and 2020 that concern events occurring more than a decade before. Doheny Decl. at ¶ 38.

7. This Motion seeks establishment of a limited bar date that will permit the Debtors to timely object to claims in this Chapter 11 proceeding that relate to the three ongoing litigations arising out of the MP Funds' historic investment in Brazil. Any judgment rendered against the MP Funds in any of the three, foreign litigations would be untenable and unenforceable against the MP Funds in the United States, as a matter of U.S. law.

8. **The VRG Claim:** In 2011, VRG sought recognition and enforcement in New York of a Brazilian arbitral award rendered against certain of the Debtors in an arbitration held in São Paulo, Brazil (the "***VRG Claim***"). Following five years of litigation, including two trips to the Second Circuit Court of Appeals, the U.S. courts fully and finally determined that the Brazilian arbitral award is *not* enforceable in the United States against the Debtors, as a matter of federal law and U.S. public policy, because the Brazilian arbitral tribunal never had any jurisdiction over the Debtors.

9. VRG, unhappy with this result and only because it lost before the U.S. courts, thereafter shopped the same unenforceable arbitral award to the courts of the Cayman Islands, where one of the Debtors has a presence, to see if those courts would recognize it. The Cayman trial court concluded that the award was unenforceable, under Cayman law, but a Cayman Court of Appeal reversed. The matter is now on appeal to the Privy Council in the United Kingdom, which sits as the court of final appeal for the Cayman Islands. If VRG should prevail in the Cayman proceedings, however, VRG would nevertheless be obligated to seek recognition and enforcement of the Cayman judgment in New York, where substantially all of the Debtors' assets are located. But VRG cannot *launder* its hopelessly defective Brazilian arbitral award, via the Cayman proceedings, and then come back to the U.S. to seek recognition and enforcement of a Cayman judgment entered on the same arbitral award that the U.S. courts already refused to

recognize for lack of jurisdiction over the Debtors. The doctrine of res judicata, and core principles of public policy and foreign-judgment enforcement law prevent such form over substance.

10. **The VarigLog Claim:** Because of the ultimate failure of Debtors' investment in Brazil, its local indirect subsidiary, VarigLog, fell upon financial distress that ultimately led to Brazilian reorganization proceedings in 2009, followed by liquidation proceedings in 2012. Those Brazilian bankruptcy proceedings remain ongoing. In May 2020, after a decade of bankruptcy proceedings in Brazil and only after repeatedly reporting to the Public Attorney of São Paulo facts to the contrary, the representative of VarigLog's estate in bankruptcy procured VarigLog to file a lawsuit against certain of the Debtors in Brazil, claiming that they had abused their control of VarigLog so as to cause its bankruptcy, and should be held liable in Brazil for the entirety of VarigLog's debts in bankruptcy. The claims now being asserted in Brazil (the "***VarigLog Claim***") are all premised on facts and events dating from more than a decade ago.

11. The claims are clearly barred by two New York-law-governed Debt Assumption Agreements, dating from 2009, in which certain of the Debtors, as lenders to VarigLog—and in an effort at that time to recover VarigLog's financial position—agreed to release VarigLog from \$250 million in debt obligations it owed to them, in exchange, *inter alia*, for releases and indemnifications by VarigLog broadly against any claims relating in any way to the parties' relationship prior to December 31, 2008. The claims brought by VarigLog, for the first time in May 2020, all fall squarely within the terms of the New-York law releases and indemnifications contained in the Debt Assumption Agreements. They are equally precluded at this stage by the New-York law doctrines of ratification and equitable estoppel. VarigLog has accepted and benefited from the validity of the \$250 million in debt relief afforded to it under the Debt Assumption Agreements, such that the \$250 million is not reflected as claims against the estate in

its bankruptcy. But at the same time, by bringing the Brazilian claims, VarigLog purports to disavow the consideration it gave for that debt relief, consisting of the releases and indemnifications. VarigLog cannot take the benefit of a New York law contract but leave behind the concomitant burden it agreed in exchange for that benefit. In all events, any future Brazilian court judgment in VarigLog's favor and against the Debtors will be unenforceable in the United States.

12. **The HJDK Claim:** While VarigLog was undergoing judicial restructuring in Brazil, HJDK Aeroespacial, Inc. ("**HJDK**"), a Panamanian entity controlled by German Efromovich, made loans to VarigLog totaling approximating R\$24 million (which is currently approximately USD\$ 4.6 million). HJDK also separately agreed to purchase an unrelated Brazilian entity from certain affiliates of MatlinPatterson (the "**Remora Entities**"), which Mr. Efromovich personally guaranteed.

13. HJDK defaulted on its purchase obligation and VarigLog defaulted on the repayment of the loans. The Remora Entities obtained a judgment in New York State court against Mr. Efromovich pursuant to the guaranty. In apparent retaliation, HJDK then sought and obtained in Brazil, *ex parte*, an order piercing VarigLog's corporate veil and holding one of the Debtors (MP Advisers) and another MatlinPatterson entity which no longer exists (together the "**Named Defendants**"), liable for the unpaid VarigLog loans. HJDK obtained the *ex parte* judgment by misrepresenting to the Brazilian court that the Named Defendants had misappropriated the R\$24 million from VarigLog, based on selective excerpts from VarigLog's Brazilian bankruptcy proceeding. As is clear, however, from the full record before the bankruptcy court, those funds were *not* taken by the Named Defendants (or any other MP entity) but rather had been used, pursuant to the Bankruptcy Court's order, to pay pre-petition claims. HJDK sat on the *ex parte*

judgment for more than five years and only served the Named Defendants with it, via Letters Rogatory, in May 2019 (the “*HJDK Claim*”).

14. The Named Defendants and the MP Funds now find themselves in a costly and lengthy legal battle in Brazil to try to *undo* the prejudice already done to them by HJDK on an *ex parte* basis. As will be briefed more fully in the event that HJDK files a proof of claim before this Court, any Brazilian judgment ultimately obtained by it against the Named Defendants or MP Funds will be unenforceable in the United States for either of two basic reasons: (a) it will have been rendered by a civil court without subject matter jurisdiction, because HJDK’s claim belonged before the Brazilian bankruptcy court with jurisdiction over VarigLog’s bankruptcy; and (b) it will have been obtained by a fraud committed on the Brazilian court *ex parte* and without due process.

15. For the reasons more fully developed below, none of the VRG, VarigLog or HJDK claims is enforceable against Debtors or their assets in the United States. All of them would have to be brought here eventually for enforcement if—after years of further, pointless litigation—the foreign courts ultimately entered judgment against the relevant MP Debtor entities. And collectively the asserted amount of the claims exceeds the Debtors’ available assets. This Court should therefore set a limited bar date to permit the Debtors to timely object to such claims and seek their disallowance in connection with plan confirmation.

Jurisdiction and Venue

16. The United States Bankruptcy Court for the Southern District of New York (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 Southern District of New York*, dated January 31, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

17. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

18. The statutory bases for the relief requested herein are section 105(a) of the Bankruptcy Code, Bankruptcy Rule 3003(c), Local Rule 3003-1 and the Bar Date Guidelines.

Relief Requested

19. By this motion, the Debtors seek entry of an order (a) requiring VRG, VarigLog and HJDK to file proofs of claim against the Debtors on or before September 3, 2021 (the “*Litigation Claims Bar Date*”) and (b) approving the form and manner of notice of the Litigation Claims Bar Date.

Basis for Relief

I. A BAR DATE SHOULD BE SET FOR THE VRG CLAIM

A. Factual Background

1. The Sale Of VRG And The Share Purchase And Sale Agreement

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

21. The PSA, which included an arbitration clause, specifically identified the “Parties” to the Agreement as VarigLog and Volo dB (the “Sellers” of the shares in VRG) and GTI (the “Buyer”). Gol, as parent company to GTI, also signed the PSA as a guarantor of the obligations of the Buyer. By contrast, neither Volo LLC nor either of the MP Funds or their General Partner, MatlinPatterson Global Partners II LLC, signed the PSA or were Parties to it. *Id.* at ¶ 42.

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

2. **A Brazilian Arbitral Award Is Rendered Against The MP Funds**

23. As is commonplace in the purchase and sale of a going concern, the PSA included a purchase price adjustment process to account for the fluctuation in VRG's working capital during the time between signing of the PSA and completion of the sale. Doheny Decl. at ¶ 44.

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

25. Over the MP Funds' objections that they were not parties to the PSA and never agreed to the arbitration clause contained within it, the Brazilian arbitral tribunal appointed to decide the purchase price adjustment dispute found that it had jurisdiction over the MP Funds. *Id.* at ¶ 46. This was on the basis that the MP Funds had entered into the non-compete side letter, even though the side letter contained no arbitration agreement and the purchase price dispute was wholly unrelated to the side letter's non-compete obligation. *Id.*

26. In its final award on the merits of the purchase price dispute, dated September 2, 2010 (the "***Brazilian Arbitral Award***"), the tribunal expressly rejected VRG's claim that the MP Funds were alter egos of the Sellers, but then held the MP Funds jointly and severally liable with the sellers of VRG, for an amount equal to the entire purchase price adjustment obligation of the Sellers. *Id.* at ¶ 47. The tribunal did so on the basis of tort liability, even though VRG as the claimant in the arbitration never advanced any such tort claim against the MP Funds, even though the Tribunal rejected the alter ego claim that was advanced, and even though the measure of

damage imposed on the MP Funds was a contractual purchase price obligation, not a tort injury. *Id.* at ¶ 47.

3. **The U.S. Courts Fully And Finally Determine That The Brazilian Arbitral Award Is Unenforceable In The United States As A Matter Of Public Policy**

27. In January 2011, VRG elected to file a petition in the Southern District of New York to seek recognition and enforcement of the Brazilian Arbitral Award in the United States, against the MP Funds, in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “*New York Convention*”), which is incorporated into U.S. law by section 207 of the Federal Arbitration Act. Doheny Decl. at ¶ 48.

28. Over the next four and a half years, the MP Funds and VRG fully litigated in the U.S. Courts the enforceability of the Brazilian Arbitral Award against the MP Funds. This included two substantive hearings before the U.S. District Court for the Southern District Court of New York and two appeals to the Second Circuit Court of Appeals (collectively, the “*United States Proceedings*”). *Id.* at ¶ 49. The MP Funds opposed enforcement in the United States of the Brazilian Arbitration Award on three separate grounds: First, that the arbitrators had no jurisdiction over the MP Funds in Brazil because the MP Funds, as non-parties and non-signatories to the PSA, never agreed to the arbitration clause contained in the PSA; second, on the basis that the tribunal’s finding of liability based on a tort claim that was never alleged or advanced by VRG as claimant in the arbitration violated the MP Funds’ due process rights, because they were never provided a fair or adequate opportunity to defend against the basis of liability that was imposed only by surprise in the Tribunal’s final award; and third, that the arbitral tribunal exceeded the scope of its authority by purporting to adjudicate a tort claim that was never submitted to it for determination. *Id.*

29. VRG's attempts to enforce the Brazilian Arbitral Award in the United States were denied at every step of the way. *Id.* at ¶ 50. Specifically, both the District Court and the Second Circuit, applying *de novo* review, ultimately concluded that the MP Funds never consented to arbitration in Brazil, because they were intentional non-parties to the PSA and its arbitration clause—having agreed only to the separate non-compete side letter and *not* to the PSA—and that the arbitral tribunal therefore fundamentally lacked any jurisdiction over the MP Funds when rendering its award. *VRG Linhas Aereas S.A. v MatlinPatterson Global Opportunities Partners II L.P.*, No. 11 Civ. 0198 (MGC) at *2, 2014 WL 4928929 (S.D.N.Y. 2014); *VRG Linhas Aereas S.A. v MatlinPatterson Global Opportunities Partners II L.P.*, 605 Fed.Appx. 59, 61 (2d Cir. 2015); Doheny Decl. at ¶ 50.

30. In so concluding, the U.S. Courts applied Article V(2) of the New York Convention and found the Brazilian Arbitral Award contrary to the public policy of the United States. *VRG Linhas Aereas S.A. v MatlinPatterson Global Opportunities Partners II L.P.*, 717 F.3d 322, 325 (2d Cir. 2013) (citing *Sarhank Grp. v Oracle Corp.*, 404 F.3d 657 (2d Cir. 2005)); *VRG Linhas Aereas S.A. v MatlinPatterson Global Opportunities Partners II L.P.*, 605 Fed.Appx. 59, 61 (2d Cir. 2015). Because the District Court and Second Circuit both concluded that the arbitrators had no jurisdiction over the MP Funds in Brazil, they did not reach the MP Funds' separate, due process and excess-of-authority defenses to the enforcement of the Award, as there was no need to reach those issues in order to hold that the Award was unenforceable. Doheny Decl. at ¶ 50.

31. VRG sought rehearing and rehearing *en banc* before the Second Circuit. By order dated August 20, 2015, the Second Circuit denied the request. *Id.* at ¶ 51. VRG did not thereafter seek U.S. Supreme Court review. Thus, as a matter of U.S. law, and as a result of nearly five years of litigation before the federal courts in New York, the Brazilian Arbitral Award has been fully

and finally adjudicated as unenforceable in the United States because the arbitrators had no jurisdiction over the MP Funds, as a result of which, enforcement of the Brazilian Arbitral Award against the MP Funds in the United States is contrary to U.S. public policy. *Id.* at ¶¶ 51–52.

4. VRG Seeks Enforcement Of The Same Brazilian Arbitral Award In The Cayman Islands Only After The US Courts Fully And Finally Refuse Enforcement Of The Award

32. On September 1, 2016, only after failing to enforce the Brazilian Arbitral Award in the United States and one day before the Cayman limitation period for seeking enforcement of the Brazilian Arbitral Award was to expire, VRG elected to commence proceedings in the Grand Court of the Cayman Islands, seeking to recognize and enforce the Brazilian Arbitral Award in the Cayman Islands. VRG’s Cayman lawsuit proceeded under the same New York Convention treaty that the U.S. Courts had applied when refusing to enforce the Award in New York. Doheny Decl. at ¶ 53. The MP Funds opposed enforcement of the Brazilian Arbitral Award in the Cayman Islands on the same basic three grounds under the New York Convention that they had raised in the U.S. Proceedings. *Id.*

33. The MP Funds prevailed at trial before the Cayman Grand Court, which held that the Brazilian Arbitral Award was unenforceable in the Cayman Islands for all three of the grounds advanced by the MP Funds: lack of arbitral jurisdiction, denial of due process (or breach of natural justice in Cayman law terms) and breach of the scope of the issues submitted by the parties to arbitration. *Id.* at ¶ 54.

34. VRG appealed to the Cayman Court of Appeal, but notably did not appeal against the finding that the MP Funds never consented to arbitration, instead contending on appeal only that the Cayman courts should be *estopped* from considering that question at all, because the Brazilian courts had refused to set aside the Brazilian Arbitral Award in Brazil and, under Cayman Islands law, the question of consent to arbitrate was a question of Brazilian law. *Id.* at ¶ 55.

35. The Cayman Court of Appeal overturned the Grand Court’s decision, holding, *inter alia*, that the Cayman Islands’ courts are estopped from considering whether the MP Funds agreed to arbitrate by virtue of the Brazilian court decisions refusing to vacate the Brazilian Arbitral Award in Brazil. Doheny Decl. at ¶ 56. The Cayman Court of Appeal therefore declined to consider the issue upon which the U.S. courts had determined that the Brazilian Arbitral Award is not enforceable in the United States: *i.e.*, that the MP Funds never consented to arbitrate and the arbitrators never had any jurisdiction over them. *Id.* The Cayman Court of Appeal also dismissed the United States Proceedings as being “of no assistance” to it because the question of arbitral consent and jurisdiction was “decided as a matter of US law and jurisprudence” by the U.S. Courts, rather than Cayman law. *Gol Linhas Aereas S.A. (formerly VRG Linhas Aereas S.A.) v MatlinPatterson Global Opportunities Partners (Cayman) II LP* CICA (Civil) Appeal 12 of 2019 at ¶¶ 57–58.

36. Accordingly, the Cayman Court of Appeal decision is against the MP Funds, in the approximate amount of USD\$60 million as at the Petition Date. *Id.* at ¶ 32. The MP Funds have appealed to the Judicial Committee of the Privy Council, the Cayman Islands’ court of final appeal, which appeal remains pending. *Id.* at ¶ 57.

B. Any Final Cayman Judgment Recognizing The Brazilian Arbitral Award Would Be Unenforceable Against The MP Funds In The United States

37. The federal courts in New York have fully and finally determined that the Brazilian Arbitral Award is *not* enforceable in the United States, as a matter of U.S. law. Acknowledging the fundamental public policy interest that the United States has in protecting American persons engaged in foreign trade from recalcitrant foreign courts and tribunals, the Second Circuit assessed, *de novo*, whether the MP Funds agreed to arbitrate, as a matter of U.S. law standards of arbitral

consent, and held that they did not, rendering the Brazilian Arbitral Award unenforceable in the United States as a matter of public policy.

38. VRG, unsatisfied with the result of nearly five years of litigation in the United States, seeks to circumvent that result by having instituted (one day before the limitation period expired) proceedings to enforce the Brazilian Arbitral Award in the Cayman Islands, and then enforce in the United States a Cayman Islands judgment based on the Brazilian Arbitral Award. VRG could have taken steps in the Cayman Islands at any time, but chose to do so only after its attempts to enforce the Brazilian Arbitral Award in the United States failed. VRG has now spent over a decade pursuing enforcement of the Brazilian Arbitral Award, in one set of courts then another.

39. Even if VRG is ultimately successful in the Cayman proceedings, as a matter of U.S. law VRG cannot circumvent the decision of the U.S. courts rendering the Brazilian Arbitral Award unenforceable against the MP Funds in the United States by its tactical choice to go to a different forum to seek a judgment on the very same Brazilian Arbitral Award, only after receiving a result in the United States that it did not like. VRG cannot somehow *launder* the unenforceable Brazilian Arbitral Award, through foreign court proceedings, and re-appear in the United States to seek a second bite at the same enforcement apple. For reasons that will be fully briefed by Debtors should VRG file a proof of claim before this Court, such an outcome is antithetical to fundamental principles of *res judicata*, and is barred by that doctrine. Further, it would be contrary to U.S. public policy and in conflict with the decision already rendered by the Second Circuit, and therefore unenforceable under New York's foreign judgment enforcement law.

40. VRG will undoubtedly seek to rely on a line of cases which has recognized generally that federal law governing recognition of foreign arbitral awards does not preempt state

law governing recognition of foreign judgments. Under this line of cases it is procedurally open to a foreign creditor to seek enforcement of a foreign arbitral award under federal law, or a foreign judgment entered on the basis of a foreign arbitral award, under state law, or both. But *none* of those cases—nor any case that Debtors could find, anywhere—has ever permitted a foreign creditor to first come to the United States with a foreign arbitral award, have it rejected because it was rendered without any jurisdiction, contrary to U.S. public policy, and then return with that same foreign arbitral award, packaged as a foreign judgment, because some foreign court somewhere else was willing to recognize it, and thereby end-run U.S. public policy by enforcing the foreign judgment, in place of the foreign arbitral award. This is precisely what VRG would espouse here, and it should not be allowed.

C. The Proposed September 3 Bar Date is Fair to VRG

41. As noted above, the Debtors' litigation with VRG has lasted more than a decade. VRG is represented by sophisticated counsel, and, as described below, will be provided notice of the proposed Litigation Claims Bar Date and the requirement that VRG file a proof of claim prior to September 3, 2021. The asserted amount and nature of the VRG Claims is known to both VRG and the Debtors, and through prior litigation, VRG has already collected (and submitted in other forums) the necessary supporting documentation for its proof of claim. As such, requiring VRG to file its proof of claim by the Litigation Claims Bar Date is fair to VRG and in the best interests of all parties-in-interest in these Chapter 11 Cases, especially since the adjudication of the VRG Claim is a condition to the effectiveness of the Debtors' proposed Plan.

II. A BAR DATE SHOULD BE SET FOR THE VARIGLOG CLAIM

A. Factual Background

1. Loans To VarigLog And The Debt Assumption Agreements

42. During the course of the MP Funds' investments in the Brazilian aviation industry, Volo LLC made loans to VarigLog, and Volo LLC along with another entity, CAT Aérea LLC (or "CAT", which is now a wholly-owned subsidiary of Volo LLC), made loans to VRG. Doheny Decl. at ¶ 59. The loans made to VRG were subsequently assumed by VarigLog, such that VarigLog held all of the debts owed to Volo LLC and CAT. *Id.*

43. During 2008, VarigLog experienced financial difficulty. Volo LLC and CAT took various steps to improve VarigLog's performance, including allowing VarigLog to assign \$250 million of the debt it owed to them to another entity and releasing VarigLog from any further obligation to repay the loans. *Id.* at ¶ 60. This assignment and assumption of the loans was carried out by two debt assumption agreements, both dated December 31, 2008 (the "**Debt Assumption Agreements**"). *Id.* The Debt Assumption Agreements are governed by New York law and contain a forum selection clause in favor of New York courts. Doheny Decl. at ¶ 60.

44. As VarigLog itself explained in court filings in Florida, the Debt Assumption Agreements "*essentially had the effect of converting \$250,000,000 debt into equity, which improved VarigLog's financial condition and prospects as a going concern and enhanced its ability to comply with certain Brazilian regulatory requirements.*" See *In re Varig Logistica S.A.* Case No. 09-15717-RAM (S.D.Fla), Chapter 15 Petition [ECF No. 1], ¶ 13 and *In re Varig Logistica S.A.* Case No. 09-15717-RAM (S.D.Fla), Declaration of Foreign Representative dated March 30, 2009 [ECF No. 4], ¶ 13.

45. In exchange for Volo LLC and CAT releasing VarigLog from its obligation to repay \$250 million in debt, VarigLog, on behalf of itself, all successors and anyone claiming by or

through it, released Volo LLC, CAT and their related and affiliated parties from all claims, including future claims, “*based in whole or in part on any act, omissions, transaction, event or other occurrence taking place on or prior to*” December 31, 2008, that in any way related to VarigLog (the “**Releases**”). Doheny Decl. at ¶ 61.

46. VarigLog also agreed to indemnify the released parties from and against any claims and losses, damages and expenses incurred by any of them as a result of claims, by any person including VarigLog, relating to their transactions or relationship with VarigLog (the “**Indemnifications**”). *Id.* See Debt Assumption Agreements, Exhs. C-1 and C-2 to Doheny Decl., ¶ 4(c).

47. In entering into the Debt Assumption Agreements, VarigLog expressly acknowledged and represented that: (i) “*for good and valuable consideration*” it “*agreed and intend[ed] to be legally bound*” by the Debt Assumption Agreements “*irrevocably and irreversibly*” (*see* Debt Assumption Agreements, Exhs. C-1 and C-2 to Doheny Decl., preamble); (ii) it was authorized to enter into the Debt Assumption Agreements and to carry out the transactions contemplated thereby, and agreed and represented that it would be bound by the terms of the Releases and Indemnifications indefinitely (*see* Debt Assumption Agreements, Exhs. C-1 and C-2 to Doheny Decl., ¶¶ 10 and 4(d)); and (iii) each “*Agreement has been drafted jointly by the Parties at arm’s length*” and that VarigLog was “*represented by its in-house counsel in connection with the negotiation, drafting and execution of this Agreement*”, that it “*had ample opportunity to consult with outside counsel*” and that “*its decision not to consult with outside counsel (i) has not impaired its ability to negotiate, draft or execute this Agreement, [and] (ii) has not affected the relative bargaining power of the Parties*”. (*See* Debt Assumption Agreements, Exhs. C-1 and C-2 to Doheny Decl., ¶ 11(vi)).

48. Volo LLC and CAT relied on the Releases and Indemnifications, as well as the New York choice of law and forum, in entering into the Debt Assumption Agreements. Doheny Decl. at ¶ 62. These provisions were a valuable part of the consideration that VarigLog provided to Volo LLC and CAT in exchange for their releasing \$250 million in debt obligations owed to them by VarigLog. *Id.*

49. As a result of entering into the Debt Assumption Agreements, Volo LLC and CAT changed their position *vis-à-vis* VarigLog, including by losing any recourse that they would have had against VarigLog with respect to the \$250 million in assigned debt. *Id.* at ¶ 63. Volo LLC and CAT have not been repaid for those loans and, as events have transpired, they are now disadvantaged in VarigLog's Brazilian bankruptcy, as they have foregone combined unsecured claims of approximately \$250 million. *Id.*

2. **Over A Decade After VarigLog Entered Bankruptcy In Brazil, VarigLog's Trustee Seeks To Hold The MP Funds And Certain Other MP Parties Responsible For The Entirety Of VarigLog's Creditor Obligations In Brazil**

50. VarigLog's financial situation did not improve. In 2009 it entered into judicial restructuring proceedings in Brazil. *Id.* at ¶ 64. In connection with those foreign bankruptcy proceedings, on March 31, 2009, VarigLog filed a Petition for Chapter 15 Relief and Recognition of a Foreign Proceeding in the Bankruptcy Court in the Southern District of Florida. *Id.*

51. In September 2012, the Brazilian reorganization was converted into a liquidation proceeding. *Id.* at ¶ 65. In connection with the conversion to a liquidation proceeding, VarigLog's Trustee filed a report in 2013 with the public attorney's office in São Paulo. This report assessed the probable causes of VarigLog's bankruptcy. A year later the Trustee filed a second report with the public attorney confirming the first report. Both reports ascribe the causes of the bankruptcy to, in particular, the decline in demand for the air transportation services that VarigLog used to

provide and its inability to generate positive results. Neither report suggested in any way that any sort of misconduct by the MP Funds or their affiliates had caused VarigLog's bankruptcy. *Id.*

52. Despite this, on May 11, 2020, VarigLog filed proceedings in the 1st Bankruptcy and Judicial Reorganization Court of the Judicial District of São Paulo against the MP Funds and certain of the other Debtors (hereinafter the "**MP Parties**") seeking to hold them responsible for the entirety of VarigLog's debt to creditors, totaling approximately USD\$345.6 million at today's exchange rate (the "**Brazilian Action**").

53. The Brazilian Action alleges that the MP Parties had an improper relationship with VarigLog, breaching fiduciary duties allegedly owed and acting as its alter ego, thus causing its bankruptcy. *Id.* at ¶ 67.

54. VarigLog's Brazilian Action relies overwhelmingly on alleged facts that occurred more than 12 years ago, prior to December 31, 2008 and prior to the two reports that VarigLog's Trustee filed with the public attorney attributing the causes of the bankruptcy to other factors. All but one of the alleged acts/events that are the subject of the Brazilian Action occurred during the period between January 27, 2006 and the end of August 2008. Doheny Decl. at ¶ 67.

55. By virtue of the Brazilian Action, VarigLog seeks impermissibly to enjoy the New York-law benefits of the Debt Assumption Agreements (\$250 million in debt forgiveness) for purposes of its bankruptcy, as the forgiven debt does not now appear as creditor claims in VarigLog's Brazilian bankruptcy, but at the same time disavow the New York-law consideration that VarigLog gave for that relief, consisting of the Releases and Indemnities which bar the claims it now pursues in the Brazilian Action. Doheny Decl. at ¶ 67. Because the two legal causes of action asserted in the Brazilian Action (that the MP Parties breached fiduciary duties and that the corporate veils of all of the several entities within the investment structure should be lifted) are

based on fact allegations that took place prior to December 31, 2008, they are released, waived and discharged pursuant to the terms of the Debt Assumption Agreements. Tellingly, the Brazilian Action makes no allegations in respect of the Debt Assumption Agreements, even though the filing of that Action necessarily presupposes that those Agreements are somehow invalid. *See In re Varig Logistica S.A.*, Case No. 09-15717-RAM (S.D.Fla), Notice of Filing of Complaint Against MatlinPatteron Entities, attaching Brazilian Compliant and Translation thereof [ECF No. 170].

3. The MP Parties' Adversary Proceeding Before The Chapter 15 Bankruptcy Court In The Southern District of Florida

56. On June 23, 2020, the MP Parties filed a complaint in the Chapter 15 proceeding that VarigLog had commenced before the Bankruptcy Court for the Southern District of Florida, in connection with its Brazilian bankruptcy main proceeding. The Adversary Proceeding complaint asked the Bankruptcy Court in Miami, *inter alia*, to give effect to the Releases and Indemnifications granted by VarigLog to the MP Parties, or alternatively, for relief from the automatic stay emanating from VarigLog's Chapter 15 filing, to allow the MP Parties to pursue their claims under the New York-law governed Releases and Indemnifications in New York. Doheny Decl. ¶ 69; *See In re Varig Logistica S.A.*, Case No. 09-15717-RAM; Adv. Pro. No. 20-01243-BKC-RAM-A).

57. In essence, the Adversary Proceeding sought a determination from a U.S. court as to the existence of VarigLog's claims under U.S. law, in the light of the Releases and Indemnifications contained in the Debt Assumption Agreements, and specifically whether, as a matter of U.S. law, the claims in the Brazilian Action could form a part of VarigLog's foreign bankruptcy estate when VarigLog was relying at the same time on those same U.S. law governed Debt Assumption Agreements for purposes of its bankruptcy proceeding in Brazil, to be relieved of \$250 million in debt. Put simply, the MP Parties sought a determination that VarigLog was not

entitled to take half of a U.S. law contract from which it benefits as part of its estate, but simultaneously leave the half reflecting its concomitant U.S. law obligations behind.

58. On July 27, 2020, VarigLog's Foreign Representative in the Chapter 15 case moved to dismiss the Debtors' Adversary Proceeding complaint, *inter alia*, on the basis that the court should afford comity to the Brazilian Action and force the MP Parties to assert the Releases and Indemnifications, by way of defense, within the very action in Brazil that the MP Parties were claiming breached their New York-law rights. The Foreign Representative also raised (prematurely) various points of Brazilian law that it contended rendered the Releases ineffective. Doheny Decl. at ¶ 70.

59. The Motion to Dismiss was fully briefed by the parties and the Court heard oral argument on the motion to dismiss on October 19, 2020. A decision has not yet been issued. Doheny Decl. at ¶ 71.

B. Any Final Judgment In Brazil Against The MP Parties Would Be Contrary To The Terms Of The Debt Assumption Agreements And New York Law And Ultimately Unenforceable Against The MP Parties In The United States

60. As will be fully briefed in the event that VarigLog files a proof of claim before this Court and for purposes of disallowance, the claims being asserted against the MP Parties in Brazil are released as a matter of New York law, under the plain terms of the Debt Assumption Agreements, which provide for New York law and New York courts. The Releases were entered into in connection with substantial debt forgiveness, in an attempt to resuscitate VarigLog's financial condition and in view of a potential bankruptcy. They were broadly worded to cover future-arising claims, and claims by successors or by anyone claiming by or through VarigLog—including in bankruptcy. By their terms, and as a matter of New York law governing their construction and scope, the Releases cover the claims being asserted in the Brazilian Action.

61. Equally, VarigLog itself indemnifies the MP Parties against the very claims it purports to bring against them in Brazil. As a matter of New York law, the Indemnities contained in the Debt Assumption Agreements are broadly worded, they include first-party claims by VarigLog against the MP Parties, and by their plain terms the MP Parties are therefore indemnified against VarigLog's Brazilian claims—by *VarigLog*.

62. VarigLog cannot challenge the validity and enforceability of the Releases and Indemnities. It has ratified the Debt Assumption Agreements by accepting the benefit of the \$250 million in debt relief it received under those Agreements, over many years and for purposes of its bankruptcy. It is equally estopped by its actions from challenging the effect of the Releases and Indemnities more than ten years after continuously relying on the validity and enforceability of the Agreements in which they are contained.

63. More fundamentally, VarigLog cannot enjoy the \$250 million in debt relief it now does in its Brazilian bankruptcy—solely as a function of New York law and the terms of the Debt Assumption Agreements—but at the same time, disavow and blatantly breach, as a matter of New York law, the Releases and Indemnities it gave as consideration for that debt relief. Regardless of whether a Brazilian court is ultimately prepared to let VarigLog get away with such an injustice in Brazil, by rendering a judgment in its favor and against the MP Parties, no U.S. Court should do so, or enforce a judgment to that effect which may be rendered in Brazil.

C. The Proposed September 3 Bar Date is Fair to VarigLog

64. VarigLog is represented by sophisticated counsel, and, as described below, will be provided notice of the proposed Litigation Claims Bar Date and the requirement that VarigLog file a proof of claim prior to September 3, 2021. Further, in connection with the Adversary Proceeding, VarigLog has already collected the necessary supporting documentation for its proof of claim and briefed the key questions that will be at issue in determining whether the VarigLog Claims should

be disallowed. As such, requiring VarigLog to file its proof of claim by the Litigation Claims Bar Date is fair to VarigLog and in the best interests of all parties-in-interest in these Chapter 11 Cases, especially since the adjudication of the VarigLog Claim is a condition to the effectiveness of the Debtors' proposed Plan.

III. A BAR DATE AND SCHEDULE SHOULD BE SET FOR THE DISALLOWANCE OF THE HJDK CLAIM

A. Factual Background

1. The HJDK Loans and Enforcement Proceedings Against VarigLog

65. From late 2009, while VarigLog was undergoing judicial restructuring in Brazil, HJDK, a Panamanian entity controlled by German Efromovich, made loans to VarigLog totaling approximating R\$24 million (approximately USD \$4.6 million at current exchange rates). Doheny Decl. at ¶¶ 72–73. As of January 2021 the outstanding amount, accounting for inflation and interest is R\$89 million (which is currently approximately USD \$17.5 million). *Id.* at n.15. The Debtors were not involved in VarigLog's business at the time that HJDK loaned those funds to VarigLog, because VarigLog had been in judicial restructuring since March 2009 and a trustee was appointed to oversee the estate. *Id.*

66. VarigLog thereafter allegedly defaulted on the HJDK loans. *Id.* at ¶ 74. On April 28, 2011, HJDK filed enforcement proceedings against VarigLog in the São Paulo Civil Court seeking repayment of the loans. *Id.* The São Paulo Civil Court granted a preliminary injunction to freeze R\$24 million in VarigLog's accounts. The injunction was later overturned by the Court of Appeals of São Paulo, which released the full amount of the frozen sums. *Id.*

67. On September 27, 2012, VarigLog was declared bankrupt, and the judicial restructuring was converted to a liquidation proceeding. The Brazilian bankruptcy court ordered the R\$24 million be used to pay certain pre-petition claims, but not HJDK's claims. *Id.* at ¶ 75.

2. HJDK's Ex Parte Proceedings

68. Meanwhile, in 2011 the Remora Entities sued Mr. Efromovich personally, in state court in New York, for breaching a personal guaranty that he gave in support of HJDK's obligations in a sale and purchase transaction with the Remora Entities. HJDK, as buyer, was obliged to pay the purchase price to the Remora Entities, but defaulted. After HJDK defaulted, the Remora Entities sued Mr. Efromovich personally. Between 2012 and 2014 they obtained various decisions in their favor, including summary judgment in January 2012. Ultimately, a New York state court judgment for approximately USD\$12.8 million was entered against Mr. Efromovich in 2014. Mr. Efromovich has not paid that judgment and it is now for USD\$19 million including interest. Doheny Decl. at ¶ 76.

69. As thinly veiled retaliation for these developments in New York, in September 2013 HJDK then filed an *ex parte* request in the São Paulo Civil Court to pierce VarigLog's corporate veil to add MP Advisers and MatlinPatterson Global Opportunities Partners LP (which was an entity affiliated with MatlinPatterson Fund I that no longer exists) to the Brazilian proceedings, in order to recover its loan claims against them on an alter ego theory.⁴ *Id.* at ¶ 77.

70. Using incomplete filings from the Brazilian bankruptcy proceeding, HJDK misrepresented to the São Paulo Civil Court that the Named Defendants misappropriated the R\$24 million that had been the subject of the prior injunction proceedings from the bankruptcy. The complete bankruptcy record, however, makes perfectly clear that the funds had been used, pursuant to the bankruptcy court's order, to pay pre-petition claims. *Id.* at ¶ 78.

⁴ HJDK presumably had meant to name the MP Funds which indirectly held equity in VarigLog, rather than the MP Funds' investment adviser and an entity from another fund that had nothing to do with the investment in VarigLog. Accordingly, HJDK named the wrong parties, *ex parte*.

71. Neither MP Advisers nor the MP Funds was made aware of, and therefore did not have an opportunity to appear in, the *ex parte* veil piercing lawsuit that HJDK had filed in the São Paulo Civil Court. As a result, neither had an opportunity to defend itself, correct the record, or otherwise challenge the jurisdiction of the São Paulo Civil Court. *Id.* at ¶ 80.

72. On October 7, 2013, the São Paulo Civil Court granted HJDK judgment *ex parte*. *Id.* at ¶ 79. Having obtained this “judgment” for HJDK in Brazil, in the New York state court proceedings seeking to enforce the New York personal guaranty judgment, Mr. Efromovich has subsequently claimed the *ex parte* HJDK judgment is an asset assigned to him, and ought to be “set off” against the New York personal guaranty judgment held by the other MatlinPatterson affiliated entities. *Id.* at ¶ 79.

73. HJDK did not serve the Named Defendants via Letters Rogatory until over five years after the Brazilian judgment, on May 23, 2019. *Id.* at ¶ 80. Upon finally being served, the Named Defendants and the MP Funds (together the “*MP Respondents*”) filed an interlocutory appeal directly challenging the jurisdiction of the São Paulo Civil Court as well as a full merits defense. *Id.* at ¶ 80-81.

74. There are now two tracks of related litigation in which the MP Respondents seek to undo the prejudice already achieved by HJDK *ex parte*: (i) appeals related to the specific issue of the São Paulo Civil Court’s jurisdiction on the issue of veil piercing; and (ii) a full merits defense to the veil-piercing order. *Id.* at ¶ 81. In response to the MP Respondents’ clear merits defense, HJDK is now pursuing procedural arguments designed to deprive the MP Respondents of ever having a chance to present their substantive defenses on the merits. *Id.* All of the several strands of litigation between HJDK and the MP Respondents are still pending in Brazil at this time and are expected to take many years to resolve. *Id.* at ¶ 83.

B. Any Judgment in Favor of HJDK in Brazil Will Not Be Enforceable Against the Debtors in the United States Because it Will Lack Subject Matter Jurisdiction and Will Have Been Obtained by Fraud and with a Lack of Due Process

75. If HJDK ultimately obtains a judgment against the MP Respondents in Brazil, it will have to seek recognition and enforcement of that foreign judgment against the MP Funds in the United States, where their assets are located. As will be fully briefed in the event that HJDK files a proof of claim before this Court and for purposes of disallowance, any final Brazilian judgment in favor of HJDK will *not* be unenforceable under U.S. law for either or both of two reasons: (i) the foreign court did not have subject matter jurisdiction over the veil-piercing claim; and (ii) the judgment will have been obtained by fraud and with a lack of due process.

1. Lack of Subject Matter Jurisdiction

76. Brazilian bankruptcy courts, similar to those of the United States, have exclusive, ongoing jurisdiction over the debtor's affairs under art. 76 of Law no. 11.101/2005, which establishes the universality of the Brazilian bankruptcy court's jurisdiction. At the time of HJDK's *ex parte* veil-piercing claim, VarigLog had already been declared bankrupt, and was therefore subject to the exclusive jurisdiction of the Brazilian bankruptcy court. Any claims relating to VarigLog's obligations, including the loans owned by HJDK, were therefore subject to the exclusive jurisdiction of the Brazilian bankruptcy court.

77. Further, given that the Brazilian bankruptcy court established and authorized the use of the R\$24 million in funds to pay pre-petition claims, HJDK's allegations as to the misuse of those funds also is subject to the exclusive jurisdiction of the Brazilian bankruptcy court. This, of course, is precisely why HJDK brought the claim before the São Paulo Civil Court, because the Bankruptcy court would have readily understood that the claim was baseless since it ordered the

use of the R\$24 million that HJDK alleges the MP Respondents stole, to pay pre-petition claims rather than pay back HJDK's loan.

78. Because the São Paulo Civil Court lacks subject matter jurisdiction over the veil-piercing claim, any judgment it may render in favor of HJDK on that claim is unenforceable in the United States, pursuant to state law governing foreign judgment enforcement.

2. Fraud and Lack of Due Process

79. Any judgment rendered in favor of HJDK in Brazil will have been procured by a fraud on the court and without due process. Specifically, HJDK presented evidence that it obtained from court submissions made in VarigLog's judicial reorganization without also presenting the answers to those same submissions; the answers would have made it clear that the "missing" funds were used to pay pre-petition claims, in accordance with an order of the Bankruptcy court. Indeed, the Public Attorney's Office, which had requested that VarigLog be directed to explain how the money had been used was evidently satisfied with VarigLog's explanation because it did not conduct any further investigation into the matter. HJDK intentionally made it appear before the São Paulo Civil Court that the R\$24 million at issue was unaccounted for and falsely suggested that the MP Respondents were responsible, when, in reality, the Brazilian bankruptcy court had ordered the funds be used to pay pre-petition claims in accordance with VarigLog's plan of reorganization. Moreover, the MP Respondents did not have the opportunity to appear and contest HJDK's position and at this time it is not clear that the MP Respondents will ever be given the opportunity to do so.

80. Because HJDK will have obtained any final Brazilian judgment on its veil-piercing claim only by deliberately excluding relevant, dispositive, publicly available evidence, and because the proceedings did not afford due process to the MP Respondents, the judgment will have

been obtained by fraud and without the requirements of due process of law, and cannot be enforced in the United States under applicable state law governing foreign judgment enforcement.

C. The Proposed September 3 Bar Date is Fair to HJDK

81. HJDK is represented by sophisticated counsel, and, as described below, will be provided notice of the proposed Litigation Claims Bar Date and the requirement that HJDK file a proof of claim prior to September 3, 2021. HJDK has already served the Debtors with papers asserting the HJDK Claims and any other supporting documentation for such claims is readily available as part of the suit brought in the Sao Paulo Civil Court. As such, requiring HJDK to file its proof of claim by the Litigation Claims Bar Date is fair to HJDK and in the best interests of all parties-in-interest in these Chapter 11 Cases, especially given that the adjudication of the HJDK Claim is a condition to the effectiveness of the Debtors' proposed Plan.

IV. PROCEDURES FOR PROVIDING NOTICE OF THE LITIGATION CLAIMS BAR DATE AND FILING PROOFS OF CLAIM

82. The Debtors propose to serve on VRG, VarigLog and HJDK: (a) notices of the Litigation Claims Bar Date substantially in the forms attached as Exhibit 1-A, Exhibit 1-B and Exhibit 1-C to the proposed Bar Date Order and incorporated herein by reference (the "*Bar Date Notices*") and (b) a proof of claim in the form of Official Bankruptcy Form 410 (collectively, the "*Bar Date Notice Package*").

83. While the Litigation Claims Bar Date is a limited bar date that only applies to a handful of creditors, the Debtors' proposed Bar Date Notice Package was nevertheless prepared in consideration of the forms adopted by the Court pursuant to Local Rule 3003-1 and the Guidelines, and clearly notifies the recipients that, among other things, their proofs of claim must be filed on or before September 3, 2021—the Litigation Claims Bar Date. As soon as practicable

following the entry of the Order, the Debtors intend to serve the Bar Date Notice Package by overnight delivery and electronic service, to:

- the Office of the United States Trustee for the Southern District of New York (the “*U.S. Trustee*”);
- each of VRG, VarigLog, and HJDK and their respective counsel; and
- such additional persons and entities as deemed appropriate by the Debtors.

84. Each proof of claim must: (a) be written in English; (b) include a claim amount denominated in United States dollars; (c) include supporting documentation or an explanation as to why such documentation is not available; (d) conform substantially with Official Bankruptcy Form No. 410; and (e) be signed by the claimant or the claimant’s authorized agent.

85. A signed original of each completed proof of claim, together with any accompanying documentation required hereunder or by Bankruptcy Rules 3001(c) and 3001(d) must be delivered so as to be received no later than the Litigation Claims Bar Date. The Debtors propose that claimants be required to submit proofs of claim electronically on the Case Management / Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of New York (the “*ECF System*”) on the case docket for each applicable Debtor.

86. In addition, copies of each completed proof of claim must be delivered by e-mail to the following recipients at Simpson Thacher & Bartlett LLP, counsel to the Debtors, no later than the Litigation Claims Bar Date:

Elisha D. Graff (egraff@stblaw.com)
Tyler B. Robinson (trobinson@stblaw.com)
David R. Zylberberg (david.zylberberg@stblaw.com)
Lauren W. Brazier (lauren.brazier@stblaw.com)

Proofs of claim asserting HJDK Claims must also be delivered by e-mail to the following recipients at Schulte Roth & Zabel LLP, conflicts counsel to the Debtors, no later than the Litigation Claims Bar Date:

Adam Harris (adam.harris@srz.com)
Gayle Klein (gayle.klein@srz.com)
Kelly Koscuizka (kelly.koscuizka@srz.com)

Reservation of Rights

87. Nothing herein shall be construed as or deemed a waiver of any of Debtors' rights or remedies, whether at law or in equity or otherwise, all of which are expressly reserved.

Notice

88. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the United States Attorney's Office for the Southern District of New York; (v) the New York State Attorney General; (vi) counsel to VRG Linhas Aereas S.A. (n/k/a Gol Linhas); (vii) counsel to Varig Logistica S.A.; (viii) counsel to HJDK Aeroespacial S/A; (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (x) all entities believed to have or be claiming an interest in the subject matter of the Order or who, it is believed, otherwise would be affected by the Order. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

No Prior Request

89. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request entry of the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: July 6, 2021
New York, NY

SIMPSON THACHER & BARTLETT LLP

/s/ Elisha D. Graff _____

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Proposed Counsel to the Debtors and Debtors-in-Possession

-and-

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Proposed Conflicts Counsel to the Debtors and Debtors-in-Possession

Exhibit A

Proposed Order

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

In re:	)	Chapter 11
)	
MatlinPatterson Global Opportunities Partners II L.P., <i>et al.</i>,	)	Case No. 21-11255 (___)
)	
Debtors. ¹	)	(Jointly Administered)
)	

**ORDER (I) ESTABLISHING A DEADLINE FOR THE FILING PROOFS OF CLAIM
ASSERTING THE LITIGATION CLAIMS AGAINST THE DEBTORS AND
(II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

Upon consideration of the motion (the “*Motion*”)² of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) in these chapter 11 cases (the “*Chapter 11 Cases*”) for entry of an order (this “*Order*”), (i) establishing a deadline for the filing of proofs of claim asserting the Litigation Claims against the Debtors, and (ii) approving the form and manner of notice thereof, pursuant to section 105(a) of the Bankruptcy Code, rule 3003(c) of the Bankruptcy Rules, rule 3003-1 of the Local Rules and the Bar Date Guidelines, all as more fully set forth in the Motion; and upon the Doheny Declaration submitted in support of the Motion; and the Motion having complied with Local Rule 9013-1; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and it appearing that this is

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court may enter this Order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “*Hearing*”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor; it is HEREBY ORDERED THAT:

1. VRG, VarigLog and HJDK each shall file proofs of claim on or before September 3, 2021.
2. Proofs of claim must conform substantially to Official Bankruptcy Form No. 410.
3. The proofs of claim must be filed by electronic submission on the ECF System on the docket of the case for each applicable Debtor. In addition, copies of each completed proof of claim must be delivered by e-mail to the following recipients at Simpson Thacher & Bartlett LLP, counsel to the Debtors, no later than the Litigation Claims Bar Date:

Elisha D. Graff (egraff@stblaw.com)
Tyler B. Robinson (trobinson@stblaw.com)
David R. Zylberberg (david.zylberberg@stblaw.com)
Lauren W. Brazier (lauren.brazier@stblaw.com)

Proofs of claim asserting HJDK Claims must also be delivered by e-mail to the following recipients at Schulte Roth & Zabel LLP, conflicts counsel to the Debtors, no later than the Litigation Claims Bar Date:

Adam Harris (adam.harris@srz.com)
Gayle Klein (gayle.klein@srz.com)
Kelly Koscuiszka (kelly.koscuiszka@srz.com)

4. Proofs of claim must (i) be signed; (ii) include supporting documentation (if voluminous, attach a summary) or an explanation as to why documentation is not available; (iii) be in the English language; and (iv) be denominated in United States currency.

5. Proofs of claim must specify by name and case number the Debtor against which the claim is filed; if the holder asserts a claim against more than one Debtor or has claims against different Debtors, a separate proof of claim form must be filed with respect to each Debtor.

6. The Bar Date Notices in the forms attached hereto as **Exhibit 1-A**, **Exhibit 1-B** and **Exhibit 1-C** are approved and shall be served by overnight mail at least twenty-eight (28) days prior to the Bar Date on: (i) the U.S. Trustee; (ii) VRG and their counsel; (iii) VarigLog and their counsel; and (iv) HJDK and their counsel.

7. Pursuant to Bankruptcy Rule 3003(c)(2), if VRG, VarigLog, or HJDK shall fail to comply with this Order by timely filing a proof of claim in appropriate form, each shall forever be barred, estopped and enjoined from: (a) asserting the VRG Claim, VarigLog Claim, and HJDK Claim, as applicable, against the Debtors or their estates or property; or (b) voting on or receiving any distribution under any plan in these Chapter 11 Cases in respect of such claims.

8. The Debtors are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

9. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York
Dated: _____, 2021

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1-A

VRG Bar Date Notice

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

In re:	)	Chapter 11
)	
MatlinPatterson Global Opportunities Partners II L.P., <i>et al.</i>,	)	Case No. 21-11255 (____)
)	
Debtors. ¹	)	(Jointly Administered)
)	

**NOTICE OF DEADLINE REQUIRING VRG TO FILE OF A PROOF OF CLAIM
ON OR BEFORE SEPTEMBER 3, 2021**

The United States Bankruptcy Court for the Southern District of New York has entered an Order² establishing **September 3, 2020** (the “*Bar Date*”) as the last date for GOL Linhas Aéreas S.A. (formerly VRG Linhas Aéreas S.A.) (“*VRG*”) to file a proof of claim against any of the Debtors listed herein (the “*Debtors*”) in respect of the litigation claims against the Debtors listed on Annex A hereto (the “*VRG Claims*”). The Bar Date and the procedures set forth below for filing proofs of claim apply to the VRG Claims.

1. VRG MUST FILE A PROOF OF CLAIM

VRG **MUST** file a proof of claim in accordance with this notice and the Bar Date Order in respect of the VRG Claims to preserve such claims.

2. WHAT TO FILE

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

² As used herein, “*Bar Date Order*” means the *Order (I) Establishing A Deadline For the Filing Proofs of Claim Asserting the Litigation Claims Against the Debtors And (II) Approving the Form and Manner of Notice Thereof*, entered in the Debtors’ Chapter 11 Cases on [____], 2021 [Docket No. [__]]. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Bar Date Order.

VRG's filed proof of claim must conform substantially to Official Form No. 410. A copy of Official Form No. 410 is enclosed as **Annex B** hereto. Additional proof of claim forms may be obtained at the claims agent's website at <http://www.kccllc.net/mpii> or at www.uscourts.gov/forms/bankruptcy-forms.

All proof of claim forms must be **signed** by VRG or by an authorized agent of VRG. It must be written in English and be denominated in United States currency. VRG should attach to its completed proof of claim(s) any documents on which the VRG Claims are based (if voluminous, attach a summary) or an explanation as to why the documents are not available.

VRG's proof of claim form must not contain complete social security numbers or taxpayer identification numbers (only the last four digits), a complete birth date (only the year), the name of a minor (only the minor's initials) or a financial account number (only the last four digits of such financial account).

If VRG is asserting its VRG Claims against more than one Debtor, it must file a separate proof of claim with respect to each such Debtor and identify on each proof of claim the specific Debtor against which such VRG Claim is asserted and the case number of that Debtor's bankruptcy case. A list of the names of the Debtors and their case numbers is set forth on the claims agent's website.

3. WHEN AND WHERE TO FILE

VRG's proofs of claim must be filed electronically on the Case Management / Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of New York on the case docket for each applicable Debtor **on or before September 3, 2021**. In addition, copies of each completed proof of claim must be delivered by e-mail to the following recipients at Simpson Thacher & Bartlett LLP, counsel to the Debtors, no later than the Litigation Claims Bar

Date:

Elisha D. Graff (egraff@stblaw.com)
Tyler B. Robinson (trobinson@stblaw.com)
David R. Zylberberg (david.zylberberg@stblaw.com)
Lauren W. Brazier (lauren.brazier@stblaw.com)

Proofs of claim may not be filed by facsimile, telecopy or electronic mail transmission.

**4. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE
BAR DATE**

IF VRG FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM IT SHALL NOT BE TREATED AS A CREDITOR WITH RESPECT TO THE VRG CLAIMS FOR THE PURPOSES OF VOTING ON ANY PLAN FILED IN THESE CASES, OR PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CASES ON ACCOUNT OF SUCH VRG CLAIM AND VRG SHALL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING THE VRG CLAIMS AGAINST THE DEBTORS OR THEIR ESTATES OR PROPERTY.

VRG should consult an attorney regarding any matters not covered by this notice, such as whether it should file a proof of claim.

Dated: _____, 2021
New York, NY

SIMPSON THACHER & BARTLETT LLP

/s/ Elisha D. Graff _____

Elisha D. Graff
Kathrine A. McLendon
David R. Zylberberg
Jamie J. Fell
425 Lexington Avenue
New York, NY 10017
Tel: (212) 455-2000
Fax: (212) 455-2502

-and-

Tyler B. Robinson
Lauren W. Brazier (*pro hac vice* pending)
CityPoint
One Ropemaker Street
London EC2Y 9HU, England
Tel: +44-(0)20-7275-6500
Fax: +44-(0)20-7275-6592

Proposed Counsel to the Debtors and Debtors-in-Possession

Annex A

MatlinPatterson Global Opportunities Partners (Cayman) II L.P., MatlinPatterson Global Opportunities Partners II L.P. and MatlinPatterson Global Opportunities Partners II LLC (Appellants) v Gol Linhas Aéreas S.A. (formerly VRG Linhas Aéreas S.A.) (Respondent), in the Judicial Committee of the Privy Council JCPC 2020/0086, on appeal from the Cayman Islands Court of Appeal CICA Cause No: 12 of 2019.

Annex B

Proof of Claim – Official Form No. 410

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

No

Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Name

Number Street

City State ZIP Code

Contact phone

Contact email

Name

Number Street

City State ZIP Code

Contact phone

Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

No

Yes. Claim number on court claims registry (if known) _____

Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

No

Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$_____. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property. Nature of property: Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. Motor vehicle Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$_____ Amount of the claim that is secured: \$_____ Amount of the claim that is unsecured: \$_____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$_____ Annual Interest Rate (when case was filed) _____% Fixed Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$_____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____

Exhibit 1-B

VarigLog Bar Date Notice

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

In re:	)	Chapter 11
)	
MatlinPatterson Global Opportunities Partners II L.P., <i>et al.</i>,	)	Case No. 21-11255 (____)
)	
Debtors. ¹	)	(Jointly Administered)
)	

**NOTICE OF DEADLINE REQUIRING VARIGLOG TO FILE OF A PROOF OF
CLAIM ON OR BEFORE SEPTEMBER 3, 2021**

The United States Bankruptcy Court for the Southern District of New York has entered an Order² establishing **September 3, 2020** (the “*Bar Date*”) as the last date for the Bankrupt Estate of Varig Logistica S.A. (“*VarigLog*”) to file a proof of claim against any of the Debtors listed herein (the “*Debtors*”) in respect of the litigation claims against the Debtors listed on **Annex A** hereto (the “*VarigLog Claims*”). The Bar Date and the procedures set forth below for filing proofs of claim apply to the VarigLog Claims.

1. VARIGLOG MUST FILE A PROOF OF CLAIM

VarigLog **MUST** file a proof of claim in accordance with this notice and the Bar Date Order in respect of the VarigLog Claims to preserve such claims.

2. WHAT TO FILE

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

² As used herein, “*Bar Date Order*” means the *Order (I) Establishing A Deadline For the Filing Proofs of Claim Asserting the Litigation Claims Against the Debtors And (II) Approving the Form and Manner of Notice Thereof*, entered in the Debtors’ Chapter 11 Cases on [____], 2021 [Docket No. [__]]. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Bar Date Order.

VarigLog's filed proof of claim must conform substantially to Official Form No. 410. A copy of Official Form No. 410 is enclosed as **Annex B** hereto. Additional proof of claim forms may be obtained at the claims agent's website at <http://www.kccllc.net/mpii> or at www.uscourts.gov/forms/bankruptcy-forms.

All proof of claim forms must be **signed** by VarigLog or, by an authorized agent of VarigLog. It must be written in English and be denominated in United States currency. VarigLog should attach to its completed proof of claim(s) any documents on which the VarigLog Claims are based (if voluminous, attach a summary) or an explanation as to why the documents are not available.

VarigLog's proof of claim form must not contain complete social security numbers or taxpayer identification numbers (only the last four digits), a complete birth date (only the year), the name of a minor (only the minor's initials) or a financial account number (only the last four digits of such financial account).

If VarigLog is asserting its VarigLog Claims against more than one Debtor, it must file a separate proof of claim with respect to each such Debtor and identify on each proof of claim the specific Debtor against which such VarigLog Claim is asserted and the case number of that Debtor's bankruptcy case. A list of the names of the Debtors and their case numbers is set forth on the claims agent's website.

3. WHEN AND WHERE TO FILE

VarigLog's proofs of claim must be filed electronically on the Case Management / Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of New York on the case docket for each applicable Debtor **on or before September 3, 2021**. In addition, copies of each completed proof of claim must be delivered by e-mail to the following

recipients at Simpson Thacher & Bartlett LLP, counsel to the Debtors, no later than the Litigation Claims Bar Date:

Elisha D. Graff (egraff@stblaw.com)
Tyler B. Robinson (trobinson@stblaw.com)
David R. Zylberberg (david.zylberberg@stblaw.com)
Lauren W. Brazier (lauren.brazier@stblaw.com)

Proofs of claim may not be filed by facsimile, telecopy or electronic mail transmission.

**4. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE
BAR DATE**

IF VARIGLOG FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM IT SHALL NOT BE TREATED AS A CREDITOR WITH RESPECT TO THE VARIGLOG CLAIMS FOR THE PURPOSES OF VOTING ON ANY PLAN FILED IN THESE CASES, OR PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CASES ON ACCOUNT OF SUCH VARIGLOG CLAIM AND VARIGLOG SHALL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING THE VARIGLOG CLAIMS AGAINST THE DEBTORS OR THEIR ESTATES OR PROPERTY.

VarigLog should consult an attorney regarding any matters not covered by this notice, such as whether it should file a proof of claim.

Dated: _____, 2021
New York, NY

SIMPSON THACHER & BARTLETT LLP

/s/ Elisha D. Graff
Elisha D. Graff
Kathrine A. McLendon
David R. Zylberberg
Jamie J. Fell
425 Lexington Avenue
New York, NY 10017
Tel: (212) 455-2000
Fax: (212) 455-2502

-and-

Tyler B. Robinson
Lauren W. Brazier (*pro hac vice* pending)
CityPoint
One Ropemaker Street
London EC2Y 9HU, England
Tel: +44-(0)20-7275-6500
Fax: +44-(0)20-7275-6592

Proposed Counsel to the Debtors and Debtors-in-Possession

-and-

Adam C. Harris
Gayle R. Klein
Kelly Koscuizka
919 Third Avenue
New York, NY 10022
Tel: (212) 756-2000
Fax: (212) 593-5955

Proposed Conflicts Counsel to the Debtors and Debtors-in-Possession

Annex A

The Bankrupt Estate of Varig Logística S/A, represented by its Trustee ADJUD Administradorse Judiciais Ltda EPP, by its legal representative Mr. Vânio Cesar Pickler Aguiar, against (1) Volo Logistics LLC, (2) MatlinPatterson Global Opportunities Partners II L.P., (3) MatlinPatterson Global Opportunities Partners (Cayman) II LP, (4) MatlinPatterson Global Partners II LLC, (5) MatlinPatterson Global Advisers LLC and (6) MatlinPatterson PE Holdings LLC (previously named as MatlinPatterson Asset Management LLC), before the 1st Bankruptcy and Judicial Reorganization Court of the Judicial District of São Paulo, with case number 1038411-91.2020.8.26.0100.

Volo Logistics LLC, MatlinPatterson Global Opportunities Partners II L.P., MatlinPatterson Global Opportunities Partners (Cayman) II L.P., MatlinPatterson Global Partners II LLC, MatlinPatterson Global Advisers LLC, MatlinPatterson PE Holdings LLC (formerly known as MatlinPatterson Asset Management LLC) (Plaintiffs) v Varig Logística S.A. (Defendant) Adv. Pro. No. 20-01243-BKC-RAM-A, in In re Varig Logística S.A. (Debtor in a Foreign Proceeding), Chapter 15, Case No. 09-15717-RAM, United States Bankruptcy Court, Southern District of Florida, Miami Division.

Annex B

Proof of Claim – Official Form No. 410

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

_____ Name of the current creditor (the person or entity to be paid for this claim)

_____ Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

No

Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

_____ Name

_____ Number _____ Street

_____ City _____ State _____ ZIP Code

_____ Contact phone _____

_____ Contact email _____

_____ Name

_____ Number _____ Street

_____ City _____ State _____ ZIP Code

_____ Contact phone _____

_____ Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

No

Yes. Claim number on court claims registry (if known) _____

Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

No

Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$_____. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property. Nature of property: Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. Motor vehicle Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$_____ Amount of the claim that is secured: \$_____ Amount of the claim that is unsecured: \$_____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$_____ Annual Interest Rate (when case was filed) _____% Fixed Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$_____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies. \$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
 MM / DD / YYYY

 Signature

Print the name of the person who is completing and signing this claim:

Name _____
 First name Middle name Last name

Title _____

Company _____
 Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
 Number Street

City State ZIP Code

Contact phone _____ Email _____

Exhibit 1-C

HJDK Bar Date Notice

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

In re:	)	Chapter 11
)	
MatlinPatterson Global Opportunities Partners II L.P., <i>et al.</i>,	)	Case No. 21-11255 (____)
)	
Debtors. ¹	)	(Jointly Administered)
)	

**NOTICE OF DEADLINE REQUIRING HJDK TO FILE OF A PROOF OF
CLAIM ON OR BEFORE SEPTEMBER 3, 2021**

The United States Bankruptcy Court for the Southern District of New York has entered an Order² establishing **September 3, 2020** (the “*Bar Date*”) as the last date for HJDK Aerospace S/A (“*HJDK*”) to file a proof of claim against any of the Debtors listed herein (the “*Debtors*”) in respect of the litigation claims against the Debtors listed on Annex A hereto (the “*HJDK Claims*”). The Bar Date and the procedures set forth below for filing proofs of claim apply to the HJDK Claims.

1. HJDK MUST FILE A PROOF OF CLAIM

HJDK **MUST** file a proof of claim in accordance with this notice and the Bar Date Order in respect of the HJDK Claims to preserve such claims.

2. WHAT TO FILE

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

² As used herein, “*Bar Date Order*” means the *Order (I) Establishing A Deadline For the Filing Proofs of Claim Asserting the Litigation Claims Against the Debtors And (II) Approving the Form and Manner of Notice Thereof*, entered in the Debtors’ Chapter 11 Cases on [____], 2021 [Docket No. [__]]. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Bar Date Order.

HJDK's filed proof of claim must conform substantially to Official Form No. 410. A copy of Official Form No. 410 is enclosed as **Annex B** hereto. Additional proof of claim forms may be obtained at the claims agent's website at <http://www.kccllc.net/mpii> or at www.uscourts.gov/forms/bankruptcy-forms.

All proof of claim forms must be **signed** by HJDK or, by an authorized agent of HJDK. It must be written in English and be denominated in United States currency. HJDK should attach to its completed proof of claim(s) any documents on which the HJDK Claims are based (if voluminous, attach a summary) or an explanation as to why the documents are not available.

HJDK's proof of claim form must not contain complete social security numbers or taxpayer identification numbers (only the last four digits), a complete birth date (only the year), the name of a minor (only the minor's initials) or a financial account number (only the last four digits of such financial account).

If HJDK is asserting its HJDK Claim against more than one Debtor, it must file a separate proof of claim with respect to each such Debtor and identify on each proof of claim the specific Debtor against which such HJDK claim is asserted and the case number of that Debtor's bankruptcy case. A list of the names of the Debtors and their case numbers is set forth on the claims agent's website.

3. WHEN AND WHERE TO FILE

HJDK's proofs of claim must be filed electronically on the Case Management / Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of New York on the case docket for each applicable Debtor **on or before September 3, 2021**. In addition, copies of each completed proof of claim must be delivered by e-mail to the following recipients at Simpson Thacher & Bartlett LLP, counsel to the Debtors, no later than the Litigation Claims Bar

Date:

Elisha D. Graff (egraff@stblaw.com)
Tyler B. Robinson (trobinson@stblaw.com)
David R. Zylberberg (david.zylberberg@stblaw.com)
Lauren W. Brazier (lauren.brazier@stblaw.com)

Copies of each completed proof of claim must also be delivered by e-mail to the following recipients at Schulte Roth & Zabel LLP, conflicts counsel to the Debtors, no later than the

Litigation Claims Bar Date:

Adam Harris (adam.harris@srz.com)
Gayle Klein (gayle.klein@srz.com)
Kelly Koscuizka (kelly.koscuizka@srz.com)

Proofs of claim may not be delivered by facsimile, telecopy or electronic mail transmission.

**4. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE
BAR DATE**

IF HJDK FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM IT SHALL NOT BE TREATED AS A CREDITOR WITH RESPECT TO THE HJDK CLAIM FOR THE PURPOSES OF VOTING ON ANY PLAN FILED IN THESE CASES, OR PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CASES ON ACCOUNT OF SUCH HJDK CLAIM AND HJDK SHALL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING THE HJDK CLAIMS AGAINST THE DEBTORS OR THEIR ESTATES OR PROPERTY.

HJDK should consult an attorney regarding any matters not covered by this notice, such as whether it should file a proof of claim.

Dated: _____, 2021
New York, NY

SIMPSON THACHER & BARTLETT LLP

/s/ Elisha D. Graff _____

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Proposed Counsel to the Debtors and Debtors-in-Possession

-and-

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Proposed Conflicts Counsel to the Debtors and Debtors-in-Possession

Annex A

HJDK Aeroespacial S.A., represented by the law firm Licraastro Focaccia Advogados (Mr. Rogerio Licastro Torres de Mello) against (1) MatlinPatterson Global Opportunities Partners L.P., (2) MatlinPatterson Global Advisers LLC, (3) MatlinPatterson Global Opportunities Partners II L.P. and (4) MatlinPatterson Global Partners (Cayman) II LP before the 2nd Civil Court of the Judicial District of São Paulo, with case number 0139465-35.2011.8.26.0100.

Annex B

Proof of Claim – Official Form No. 410

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Name

Name

Number Street

Number Street

City State ZIP Code

City State ZIP Code

Contact phone

Contact phone

Contact email

Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

No
 Yes. Claim number on court claims registry (if known) _____

Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$_____. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property. Nature of property: Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. Motor vehicle Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$_____ Amount of the claim that is secured: \$_____ Amount of the claim that is unsecured: \$_____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$_____ Annual Interest Rate (when case was filed) _____% Fixed Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$_____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____