Hearing Date and Time: August 30, 2022 at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline: August 23, 2022 at 4:00 p.m. (prevailing Eastern Time)
Reply Date and Time: August 26, 2022 at 4:00pm (prevailing Eastern Time)

Docket #0507 Date Filed: 07/29/2022

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF DEBTORS' MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS FILED BY THE BANKRUPTCY ESTATE OF VARIG LOGISTICA S.A

PLEASE TAKE NOTICE that a hearing on the *Debtors' Motion for Summary Judgment on the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A.* (the "***Motion***") will be held over Zoom before the Honorable David S. Jones, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the "***Court***"), One Bowling Green, Courtroom No. 501, New York, New York 10004, on **August 30, 2022 at 10:00 a.m. (prevailing Eastern Time)**.

[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: 300 East 95th Street, Suite 102, New York, New York 10128.

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PLEASE TAKE FURTHER NOTICE that due to the COVID-19 pandemic and in accordance with the Court's General Order M-543, dated March 20, 2020, the hearing will only be conducted via Zoom.[2] Parties should not appear in person and those wishing to participate in the Hearing are required to register their appearance by **4:00 p.m. (prevailing Eastern Time)** on the last business day before the Hearing at https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl.[3]

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with the Court on the docket of In re MatlinPatterson Global Opportunities Partners II L.P., Case 21-11255 (DSJ) by registered users of the Court's electronic filing system and in accordance with the General Order M-399 (which is available on the Court's website at http://www.nysb.uscourts.gov); and (d) be served so as to be actually received by **August 23, 2022 at 4:00 p.m. (prevailing Eastern Time)**, by (i) the U.S. Trustee for the Southern District of New York, (ii) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 (Attn: Elisha D. Graff and Tyler B. Robinson (emails: egraff@stblaw.com and trobinson@stblaw.com)), counsel for the Debtors, (iii) counsel to VRG, (iv) counsel to VarigLog, and (v) counsel to HJDK.

[2] A copy of the General Order M-543 can be obtained by visiting http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19.

[3] Instructions on how to register can be obtained by visiting https://www.nysb.uscourts.gov/zoom-video-hearing-guide.

PLEASE TAKE FURTHER NOTICE that only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors. In the event that no objection to the Motion is timely filed and served, the relief requested in the Motion may be granted without a hearing before the Court.

Dated: July 29, 2022
New York, NY

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS FILED BY THE BANKRUPTCY ESTATE OF VARIG LOGISTICA S.A

[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: 300 East 95th Street, Suite 102, New York, New York 10128.

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The above-captioned debtors and debtors in possession (collectively, the "***Debtors***"), respectfully submit this memorandum of law in support of their Motion for Summary Judgment on the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A. (the "***Motion***"), pursuant to Federal Rule of Civil Procedure 56(a) and Federal Rule of Bankruptcy Procedure 7056. In support of the Motion, Debtors submit the Statement of Undisputed Material Facts ("***SUMF***"), attached hereto as **Exhibit A**, the *Declaration by Elisha D. Graff In Support of Motion for Summary Judgment on the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A.* attached hereto as **Exhibit B** and seek entry of an order, substantially in the form attached hereto as **Exhibit C**.

PRELIMINARY STATEMENT

1. Debtors have achieved during the Court-ordered mediation process a settlement with VRG that positions them to pay VRG upon the effective date of a confirmed Chapter 11 plan. Debtors have also made substantial progress with HJDK towards consensual resolution of their dispute, with an agreement in principle reached between the parties. Against that backdrop, and having refused to participate in mediation voluntarily, VarigLog wants these cases converted to Chapter 7 and to have this Court abstain from adjudicating its claims in favor of Brazil, before it is constrained to demonstrate why it has any meritorious claim to begin with. This is fundamentally the wrong way around. Debtors have objected to VarigLog's opportunistic claims on the basis of *prima facie*, dispositive U.S. law grounds that ought to be determined first, and without VarigLog hijacking Debtors' Chapter 11 cases, to the detriment of all of Debtors' other stakeholders, before VarigLog has demonstrated that it even has a viable claim.

2. In light of the substantial progress made by Debtors and all other disputed creditors towards a confirmable path out of Chapter 11, this Court should adjourn decision on conversion to Chapter 7 and abstention, and first determine whether VarigLog is even a creditor in these cases.

Debtors are filing this Motion for Summary Judgment to put squarely before the Court the question of whether VarigLog's claims should be disallowed as a matter of U.S. law, and to prevent VarigLog from holding hostage a confirmable plan out of bankruptcy that would better serve Debtors' stakeholders as a whole.

3. Debtors' New York law objections to VarigLog's claims are ripe for summary judgment determination based upon undisputed facts. VarigLog has released and indemnified Debtors under the terms of two New York law- and forum- governed Debt Assumption Agreements, from and against the claims that it now makes against Debtors in Brazil, in exchange for $250 million in debt relief, the benefit of which VarigLog has indisputably claimed and enjoyed for over 13 years in its Brazilian bankruptcy. Having accepted the benefit of that New York-law debt relief and relied on it for so many years, VarigLog is bound as a matter of law by the New York-law releases and indemnification it gave in consideration therefor under the doctrines of ratification and estoppel; it cannot take the half of a New York law contract it likes while flagrantly breaching the bargained-for-consideration it gave, nor contest at this juncture—13 years after the fact—the validity or enforceability of that bargained-for-exchange. In any event, any judgment VarigLog might ultimately obtain in Brazil would be so fundamentally flawed as a matter of New York law that it would be unenforceable in the United States pursuant to New York's foreign money judgment enforcement statute.

4. For the reasons explained further below, summary judgment should be granted in favor of Debtors. VarigLog's claims should be disallowed so that Debtors can emerge from bankruptcy entirely, without further waste and delay occasioned by VarigLog's motions for conversion or abstention in respect of its claims. Following mediation, those motions serve only to hold these cases hostage, at a price of substantial further cost and delay, at the behest of a totally

meritless contingent-litigation creditor, to the detriment of all other, legitimate creditors and stakeholders.

MATERIAL UNDISPUTED FACTS

5. VarigLog is a former, indirect subsidiary of the Debtor MP Global Opportunities Partners II Funds and the Debtor, Volo Logistic LLC (Delaware). *See* Exhibit B.

6. In or about 2008, VarigLog was experiencing financial difficulty, resulting in the execution of two Debt Assumption Agreements, both dated December 21, 2008 (the "***Debt Assumption Agreements***"). SUMF, ¶ 3.

7. Under the terms of the Debt Assumption Agreements, VarigLog assigned $250 million of debt that it owed to affiliated entities within the same investment structure to a different affiliated entity, Volo dB, and was released from any further obligation to repay those loans. *See* Debt Assumption Agreements, ¶ 2.

8. The Debt Assumption Agreements are expressly governed by the substantive laws of New York, without regard to New York's principles of conflicts of laws. *See* Debt Assumption Agreements, ¶ 9. They contain in respect of VarigLog an exclusive forum selection clause specifying the New York courts for any disputes, *inter alia*, as to the validity or enforceability of the Debt Assumption Agreements. *Id.*, ¶ 8(i).

9. In exchange for being released from its obligation to repay $250 million in debt, VarigLog, on behalf of itself and all of its successors or anyone claiming by or through it, released Debtors 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***"). *See* Debt Assumption Agreements, ¶ 4(b).

10. VarigLog also agreed to indemnify the same released parties (which include all Debtors before the Court) 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***"). *See* Debt Assumption Agreements, ¶ 4(c).

11. In March 2009, VarigLog entered judicial reorganization proceedings in Brazil. On September 27, 2012, VarigLog's judicial reorganization proceedings were then converted into liquidation proceedings. SUMF, ¶¶ 9-10. VarigLog's bankruptcy proceedings remain pending in Brazil and have been ongoing there for more than thirteen years.

12. Throughout its Brazilian bankruptcy proceedings, VarigLog has relied on and enjoyed the benefit of the $250 million in debt relief afforded to it under the Debt Assumption Agreements. Specifically, VarigLog has *never* listed any of the debts that those Agreements assigned to Volo dB as obligations owed by VarigLog in the schedule of creditors required for the Brazilian reorganization and bankruptcy procedures. SUMF, ¶ 13.

13. Notwithstanding the Releases and Indemnifications contained in the Debt Assumption Agreements and the exclusive New York choice of forum for any dispute by VarigLog as to the validity or enforceability of those Agreements, on May 11, 2020, VarigLog filed proceedings in the 1st Bankruptcy and Judicial Reorganization Court of the Judicial District of São Paulo against the Debtors seeking to hold them responsible for the entirety of VarigLog's bankruptcy debts to its creditors (the "***Brazilian Action***"). SUMF, ¶ 16.

14. The Brazilian Action alleges that the Debtors caused VarigLog's bankruptcy by exercising improper control over and/or acting as the alter egos of VarigLog in the period prior to its bankruptcy. *Id*.

15. The Brazilian Action is based virtually entirely on facts and events that occurred prior to December 31, 2008. SUMF, ¶ 17.

16. All of Debtors' assets are located in the United States, such that in order for VarigLog to enforce any ultimate final money judgment it might ever obtain in Brazil, it would have to return to the United States with a final Brazilian judgment and seek enforcement under U.S. law governing the recognition and enforcement of foreign money judgments. VarigLog has accepted this to be the case. *See* SUMF, ¶ 23.

ARGUMENT

17. Summary judgment under Federal Rule 56 and Bankruptcy Rule 7056 is required when "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law". Fed. R. Civ. P. 56; Fed. R. Bankr. P. 7056; *Horror Inc. v. Miller*, 15 F.4th 232, 240 (2d Cir. 2021). The materiality of facts must be determined with reference to the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d.202 (1986). A fact is material "only if it affects the result of the proceeding and a fact is in dispute only when the opposing party submits evidence such that a trial would be required to resolve the differences". *In re CIS Corp.*, 214 B.R. 108, 118 (Bankr. S.D.N.Y. 1997).

18. Where there are no genuinely disputed issues of material fact, and the only disputes are ones relating to questions of law and the application of the law to the undisputed facts, summary judgment is appropriate. *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 192 B.R. 342, 349 (Bankr. S.D.N.Y. 1994). "[T]he proper interpretation of an unambiguous contract is a question of law for the court, and a dispute on such an issue may properly be resolved by summary judgment." *In re NIU Holdings LLC*, 624 B.R. 22, 35 (Bankr. S.D.N.Y. 2020) (citing *Omni Quartz, Ltd. v. CVS Corp.*, 287 F.3d 61, 64 (2d Cir. 2002)).

A. VarigLog's Claims Should Be Disallowed As A Matter Of New York Law

1. The Terms Of The Releases Are Clear And Cover The Brazilian Action

19. Under New York law, a valid release acts as "a complete bar to an action on a claim that is the subject of the release." *Centro Empresarial Cempresa S.A. v. America Movil, S.A.B. de C.V.*, 929 N.Y.S.2d 3, 8 (2011) ("A valid release constitutes a complete bar to action on a claim which is the subject of the release. If the language of a release is clear and unambiguous, the signing of a release is a jural act binding on the parties.") (internal quotations and citations omitted); *see also Sicuranza v. Philip Howard Apartments Tenants Corp*., 995 N.Y.S.2d 157, 158 (App. Div. 2014) (finding that the "plain language of the subject release unambiguously barr[ed] all claims" by the plaintiff). New York courts apply general releases to all claims, including claims unknown at the time. 19A N.Y. Jur. 2d Compromise, Accord, and Release § 108.

20. The Releases that VarigLog provided to the Debtors here are general releases in the broadest possible terms:

> Releasor agrees to forever release, waive and discharge all claims, actions, suits, causes of action, demands, debts, and liabilities, whether direct or derivative liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to date [*sic*] of execution of this Agreement any way relating to Release and its affiliates (other than VarigLog or VoloBr) that could have been asserted at any time, past present or future by or on behalf of the Releasor, against Releasees.

Debt Assumption Agreements, ¶ 4(b).

21. "Releasor" is defined to include "VarigLog and its predecessors; successors; assigns; current and former affiliates and subsidiaries, and each of their respective current and former directors, officers and employees, agents **and anyone claiming by or through any of the foregoing**." *Id.*, ¶ 4(a) (Emphasis added). "Releasees" is similarly, broadly defined to include:

"each of (i) Volo LLC and its predecessors, successors and assigns, (ii) Volo LLC's affiliates (other than VarigLog and VoloBr), and their predecessors, successors and assigns, and (iii) any current and former managers, members, shareholders, partners (limited or general), directors, officers, employees, agents, and advisors . . . of Volo LLC." *Id.*, ¶ 4(a). Debtors are all affiliates of Volo LLC and/or CAT and therefore are all expressly covered by the Releases.

22. By their plain terms, as construed and applied under governing New York law, the Releases granted by VarigLog on behalf of itself and its successors "and anyone claiming by or through" VarigLog, cover the claims made by the estate of VarigLog in the Brazilian Action, regardless of the nature of the claims or when they arose, which are "based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to" December 31, 2008. *Id.*, ¶¶ 4(a) and (b). The claims are therefore barred in their entirety by the Debt Assumption Agreements, which prohibits any reliance on events or occurrences prior to December 31, 2008, even in part.

23. New York courts have applied similarly broad releases in accordance with their plain terms. *See, e.g., Long v. O'Neill,* 5 N.Y.S.3d 42, 44 (App. Div. 2015) (holding a release contained in a settlement agreement that released "each other Party" from "all and/or any actions . . .whether known or not known . . . arising form or resulting form or in connection with any act or omission, event, transaction, occurrence, agreement, contract or relationship concerning [the Fund], its investments, businesses or affairs" released parties on the same side of the original dispute as the plaintiff and released claims that had not ripened at the time the release was signed); *Becher v. Tyco Intern. Ltd.*, 27 Fed. App'x 48, 50–51 (2d Cir. 2001) (plaintiffs, who had signed a broad release with their employer in exchange for a sum equal to 18 months' salary, had released claims they sought to make against the successor to the former parent entity of the employer

pursuant to the unambiguous terms of the release, which included "parents, affiliates, divisions, successors, assigns, officers, directors, employees, and/or agents" of the employer); *Centro Empresarial Cempresa S.A.*, 929 N.Y.S.2d at 8 (holding that a broadly worded release executed between sophisticated parties extended to fraud claims unknown at the time of the contract).

24. The Releases that VarigLog granted to the Debtors in the Debt Assumption Agreements stand as complete bars to VarigLog's claims in its Brazilian Action against the Debtors, as a matter of New York law.

2. <u>VarigLog Has Fully Indemnified The Debtors Against Its Own Claim</u>

25. In addition to the Releases executed in favor of the Debtors, VarigLog also agreed to indemnify Volo LLC and its affiliates for any future losses suffered on account of the parties' relationship. Under New York law, broadly-worded indemnification provisions may extend to include first-party claims when that is the effect of their plain terms. *See, e.g.*, *Mid-Hudson Catskill Ministry v. Fine Host*, 418 F.3d 168, 178–79 (2d Cir. 2005) (broad language of indemnification provisions indicates parties' intent for indemnification of first-party claims).

26. Under the terms of the Debt Assumption Agreements, VarigLog broadly agreed:

> to indemnify and hold harmless Indemnitees from and against any and all claims, damages, losses, liabilities, debts or expenses incurred by any of the Indemnitees as the result of any action or claim (or threatened action or claim) by any person against any of the Indemnitees in any way relating to any Indemnitees' transactions or relationship with VarigLog.

Debt Assumption Agreements, ¶ 4(c).

27. The Indemnitees here are defined to be the same as the Releasees for purposes of the Release provisions and therefore operate in favor of the Debtors. The Indemnification provisions of the Debt Assumption Agreements are unambiguous and evince a clear intention to extend indemnification to the broadest extent possible: Specifically, the provisions by their plain terms apply to "any and all claims," brought by "any person" and "in any way relating to" the

parties' relationship. *Id.* VarigLog, and its claims against the Debtors in the Brazilian Action, all fall squarely within the scope of this language. Therefore, VarigLog is obligated to indemnify the Debtors for any damages or liabilities awarded in the Brazilian Action, as well as for the Debtors' expenses.

28. Read together, the Releases and Indemnifications contained in the Debt Assumption Agreements evidence the parties' clear intent to absolve the Debtors as a matter of New York law of any future liability arising from their business relationship with VarigLog, in exchange for the substantial consideration of $250 million in debt relief. The provisions provide protection for the Debtors against any liability—past, present, or future—that could be traced to the parties' transactions and relationship and they are enforceable under New York law in accordance with their terms.

29. It follows that, on the undisputed material facts before this Court and as a matter of New York law, VarigLog's claims are immediately subject to set off by its own indemnification obligations to the Debtors.

3. The Debt Assumption Agreements Must Be Read As A Whole And VarigLog Is Barred By The Doctrines Of Ratification And Equitable Estoppel From Now Contesting Their Validity Or Enforceability

30. VarigLog has indicated that it will contest before this Court the validity of the Releases and Indemnifications contained in the Debt Assumption Agreements. VarigLog's position is therefore that it can keep the benefit of $250 million in debt relief granted by New York law but evade the concomitant burden of the New York law Releases and Indemnifications that it gave in consideration for that debt relief. This position is not tenable as a matter of New York law and cannot be endorsed by this Court. VarigLog cannot, on the one hand, claim the benefits it has received (and enjoyed for over 13 years) under the Debt Assumption Agreements, while at the same time disavowing the consideration it granted for those benefits. The Debt Assumption

Agreements, as with all contracts, must be taken as a whole. *Beal Sav. Bank v. Sommer*, 865 N.E.2d 1210, 1214 (N.Y. 2007) ("[A] contract should be 'read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose'") (quoting *Matter of Westmoreland Coal Co. v. Entech, Inc.*, 794 N.E.2d 667, 670 (N.Y. 2003)). The terms of the Debt Assumption Agreements that confer rights and entitlements on the Debtors cannot be severed from the terms of the Debt Assumption Agreements imposing concomitant conditions and obligations on those very rights and entitlements—they form part and parcel of the rights and entitlements as a whole.

31. In addition, both ratification and equitable estoppel apply to prevent VarigLog from contending—over 13 years after the fact—that the Releases and Indemnifications contained in the Debt Assumption Agreements are somehow (selectively) invalid or unenforceable. Simply put, VarigLog cannot be heard to make these arguments when it has accepted the benefit of the Debt Assumption Agreements for over 13 years and counting in its Brazilian bankruptcy, where the debts that were relieved do not appear as obligations of the estate, and when it has not once challenged the validity of the Debt Assumption Agreements during that period.

32. Under settled New York law, accepting the benefits of a contract and failing to promptly act to repudiate them conclusively demonstrates ratification. *See, e.g., Hewett v. Leblang*, No. 12 Civ. 1713 PKC, 2012 WL 2820274, at * 7 (S.D.N.Y. July 5, 2012) ("A settlement agreement is ratified when a party accepts payment thereunder. . . . By her conduct, [plaintiff] seeks to retain the benefit of the bargain while circumventing her own obligations thereunder. Under New York law, however, she has ratified the agreement, and may not now avoid its terms."); *see also Allen v. Riese Org., Inc.,* 965 N.Y.S.2d 437, 440 (App. Div. 2013) ("Ratification occurs when a party accepts the benefits of a contract and fails to act promptly to repudiate it.").

33. Equitable estoppel equally applies to preclude VarigLog from contesting the validity and enforceability of the Debt Assumption Agreement's terms. It "precludes a party at law and in equity from denying or asserting the contrary of any material fact which he or she has [i]nduced another to believe and to act on in a particular manner." *Dinhofer v. Medical Liability Mut. Ins. Co.*, No. 602456/2009, 2010 WL 5642496 (N.Y. Sup. Ct. Dec. 27, 2010). In the Second Circuit, parties are equitably estopped from contesting the binding effect of a contract or its terms when "a party receives a contract, makes no clear objection to its terms, and then accepts the contract's benefits". *Nirvana Int'l, Inc. v. ADT Sec. Servs., Inc.*, 525 F. App'x 12, 13–14 (2d Cir. 2014). In such a case, "the benefitting party is estopped from avoiding the binding effect of the disavowed provision." *Id*. at 14. (party equitably estopped from contesting limitation of liability provision in contract did not apply to it, because it had accepted performance of the contract by the counterparty).

34. In entering into the Debt Assumption Agreements over 13 years ago, VarigLog expressly represented to Volo LLC and CAT that it was authorized to enter into the Debt Assumption Agreements and to carry out the transactions contemplated by them and VarigLog further represented that it would be legally bound, irrevocably and irreversibly, by the terms of the Debt Assumption Agreements, including the Releases and Indemnifications and choice of law and forum provisions.

35. VarigLog has accepted the benefit of $250 million in debt relief for over 13 years, provided by Volo LLC and CAT in reliance on VarigLog's representations. The debt relief that VarigLog received improved its financial position, gave it a better chance at reorganizing and ultimately reduced the debtor claims in its eventual bankruptcy (where the $250 million in debt that was relieved does not appear as a claim against VarigLog). At no point during this 13-year

period (prior to Debtors seeking to rely on the Debt Assumption Agreements) did VarigLog or any representative thereof contend that the Debt Assumption Agreements or the promises made therein were invalid or ineffective. Further, VarigLog is bound by an exclusive choice of New York forum for any dispute as to the Debt Assumption Agreements, including their validity or enforceability. At no time in the last 13 years has VarigLog instituted any proceedings in New York to dispute the Debt Assumption Agreements. It cannot be heard to do so in Brazil because that would be a clear breach of the exclusive choice of New York forum for any such disputes to which it agreed under New York law.

36. In fact, VarigLog has recognized the validity of the Debt Assumption Agreements in its application for Chapter 15 relief in the Southern District of Florida, and by not including any of the debts assigned to Volo dB as obligations owed by VarigLog in the schedule of creditors required for the Brazilian reorganization and bankruptcy procedures.

37. VarigLog has therefore ratified the Debt Assumption Agreements and, equally, is estopped from contesting the validity or enforceability of their terms as a matter of New York law.

B. Any Ultimate Judgment In The Brazilian Action In Favor Of VarigLog Would Be Unenforceable In The United States

38. VarigLog has accepted that if it obtains a judgment against the Debtors in Brazil, it could only enforce that judgment against the Debtors in the United States where their assets are located. *See* SUMF, ¶ 23.

39. VarigLog's claims against the Debtors are procedurally and substantively improper under New York law and any resulting judgment in favor of VarigLog could not be recognized or enforced against the Debtors in New York. Foreign judgments need not be recognized by a New York court when: (i) "the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case"; (ii) "the judgment or the cause of action on which the

judgment is based is repugnant to the public policy of the United States"; (iii) "the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that court"; or (iv) "the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law" N.Y. C.P.L.R. 5304(b)(2), (3), (5) and (8). Any eventual Brazilian judgment rendered in VarigLog's favor in Brazil would violate every one of these provisions of New York's foreign judgment enforcement statute.

1. Any Ultimate Judgment In The Brazilian Action In Favor Of VarigLog Would Be Obtained by Fraud

40. Any Brazilian judgment will have been obtained in a manner contrary to the plain terms of the Debt Assumption Agreements, which mandated a New York forum for disputes concerning the New York-law governed Releases and Indemnifications. In not disclosing to the Brazilian Court the Debt Assumption Agreements, their choice of forum and the New York-law governed Releases and Indemnifications contained within them, and in continuing to pursue the Brazilian Action and oppose Debtors' New York-law governed defenses being determined in New York, VarigLog is effectively perpetrating a fraud on the Brazilian Court. New York courts have recognized that actions taken in foreign jurisdictions to bypass New York law rights are akin to perpetrating a fraud on that foreign court. *See, e.g., Josephthal & Co. Inc. v. John Phillips & Co.,* No. 00 CIV. 3479 (JSM), 2001 WL 1488177 at *4 (S.D.N.Y. Nov. 21, 2001) (granting injunctive and declaratory relief in respect of English proceedings brought in breach of a New York law governed settlement agreement, reasoning that "all that this Court is doing is preventing [the Releasor] from *perpetrating a fraud on the English Court* by seeking a recovery that exceeds the amount to which it is entitled under the law to which it subjected itself when it signed the settlement

agreement.") (emphasis added). Any judgment that results from such a fraud is unenforceable in New York (and by extension the United States) pursuant to New York C.P.L.R. section 5304(b)(2).

2. Any Ultimate Judgment In The Brazilian Action In Favor Of VarigLog Would Be Repugnant to the Public Policy of New York and the United States

41. New York has a strong public policy in favor of enforcing releases and settlements. By commencing the Brazilian Action, based on the Debtors' alleged conduct prior to December 31, 2008, VarigLog is attempting to recover on claims to which it no longer has any right pursuant to the terms of the Releases and Indemnifications it gave, and contrary to New York's policy in favor of enforcing such releases. This is a fundamental principle of justice, grounded as it is in the finality and certainty of the resolution of disputes, akin to the principle of *res judicata. See, e.g.*, *Greenberg v. Bd. of Gov. of Fed. Reserve Sys.*, 968 F.2d 164, 168 (2d Cir. 1992) ("Settlements may also have preclusive effect."). Courts asked to uphold U.S. law-governed releases at the outset of foreign litigation commenced in breach of those releases have recognized the strong public policy in favor of enforcing such releases and have upheld them, granting immediate injunctive and declaratory relief rather than deferring to the foreign courts. *Josephthal*, 2001 WL 1488177, at *4.

42. It is also offensive to the public policy of the United States and New York that VarigLog could, somehow, as a matter of Brazilian law or procedure, evade the burden of the New York law governed Releases that it executed by taking its claims to Brazil, while *at the same time* cherry-picking and retaining the debt-relief benefit of that same New York law governed contract. This is all the more so where the parties expressly selected the exclusive jurisdiction of the New York courts for the determination of disputes relating to the Releases, and is precisely the sort of bizarre and unjustifiable result that the public policy exception to judgment recognition and enforcement should prevent, as provided by New York C.P.L.R section 5304(b)(3).

3. Any Ultimate Judgment In The Brazilian Action In Favor Of VarigLog Would Be Contrary To The Agreement Reached Between The Parties

43. Courts applying the same uniform foreign money judgment statute that has been adopted in New York have refused to recognize foreign judgments reached in violation of the parties' agreement to resolve their disputes in a different forum. *See, e.g., VF Jeanswear Ltd. v. Molina,* 320 F. Supp. 2d. 412, 418 (M.D.N.C. 2004) ("[T]he proceeding in the Honduran Labor Court was contrary to the binding agreement of the parties prohibiting [defendant] from bringing any employment-related claims against [plaintiff]. Pursuant to North Carolina General Statute § 1C-1804(b)(5), the court need not recognize the Honduran judgments."); *cf. Hemlock Semiconductor Corp. v. Kyocera Corp.*, No. 15-CV-11236, 2016 WL 67596, at *17 (E.D. Mich. Jan. 6, 2016) ("[E]ven if Kyocera obtained a final judgment from the Tokyo District court, the Supply Agreements' forum selection provision and choice of law provision would preclude this Court from recognizing the foreign judgment."). The same reasoning applies here. Any Brazilian judgment will have been obtained in a manner contrary to the plain terms of the Debt Assumption Agreement's New York law and exclusive (vis-à-vis VarigLog) forum-selection provisions. The forum selection clauses are clear on their face that VarigLog agreed to the mandatory choice of a state or federal forum in New York, reserving only a unilateral option to Volo LLC or CAT (but not VarigLog) to bring suit in Brazil should they chose to do so. *See* Debt Assumption Agreements, ¶ 8. Any judgment rendered in Brazil will be in violation of the parties' agreement that any disputes arising from the Debt Assumption Agreements should be resolved in a New York court, pursuant to New York law and therefore offend New York C.P.L.R. section 5304(b)(5).

4. Any Ultimate Judgment In The Brazilian Action In Favor Of VarigLog Would Not Be Compatible With The Requirements Of Due Process Of Law

44. As VarigLog itself now insists before this Court, the Debtors have no ability procedurally to litigate their New York law rights before the Brazilian courts. VarigLog Abstention Motion, ¶ 67. This is because, in accordance with the Debt Assumption Agreement's forum selection clauses, the Debtors sought to vindicate their rights under those Agreements before a U.S. Court—as it happened, in the Southern District of Florida, because VarigLog had filed for Chapter 15 protection, resulting in an automatic stay against Debtors filing their action in a New York Court. While expressing no opinion as to which Court should determine matters relating to the Debt Assumption Agreements given the Debtors' own Chapter 11 filings, the bankruptcy court in Florida took over a year to rule on the Debtors' ability to pursue their Debt Assumption Agreement rights in the United States in accordance with the parties' forum-selection clauses. *See* SUMF, ¶ 25. The Debtors are now barred under Brazilian law from raising their New York-law rights in the Brazilian Action, where, had they raised them prior to seeking relief from a U.S. court, they would have acquiesced in VarigLog's breach of the Debt Assumption Agreement forum selection clauses and prejudiced their ability to seek relief from a U.S. court.

45. The Debtors cannot be left, as VarigLog would have it, with no court, anywhere, to hear the merits of their U.S. law rights, effectively as a result of VarigLog's own flagrant breach of the Debt Assumption Agreement's exclusive forum selection clauses. A judgment obtained in Brazil on this basis would have deprived the Debtors of their due process rights to present their case, and would be unenforceable pursuant to New York C.P.L.R. section 5304(b)(8).

C. The Enforceability And Scope Of The Debt Assumption Agreements Are Questions of U.S. Law To Be Determined By U.S. Courts

46. In its Motion for Abstention in Deference to Pending Foreign Proceeding or, Alternatively for Stay Relief [Docket No. 355] ("***VarigLog Abstention Motion***"), VarigLog attempts to encumber the Debt Assumption Agreements with supposed "threshold issues" of Brazilian law.

47. Whether there are any issues of Brazilian law implicated by the Debt Assumption Agreements can be appropriately determined by this Court, on summary judgment. *See SMP Ltd. v. SunEdison, Inc., et al.* (*In re SunEdison, Inc.*), 577 B.R. 120, 127–28 (Bankr. S.D.N.Y. 2017) (granting summary judgment on proper termination of supply and license agreement, determining that New York law rather than Korean law applied). There are no such issues here.

48. All matters relating to the Debt Assumption Agreements are expressly governed by the substantive laws of New York, without regard to New York's principles of conflicts of laws. Debt Assumption Agreements, ¶ 9. It is therefore for New York law to determine all matters relating to the interpretation, scope and enforceability of the Debt Assumption Agreements, without looking to the laws of any other jurisdiction including Brazil. *See In re SunEdison, Inc.*, 577 B.R. at 127–28 (Applying New York law to the question of the validity of choice of law clause in a supply and license agreement, holding that "[h]ere, the parties selected New York as the governing law without regard to its conflict of law rules…[w]here the parties' contract selects New York law and, as here, the amounts involved meet the monetary threshold under [General Obligations Law] § 5–1401, the Court must abjure a conflicts analysis or consider foreign law or foreign public policy, and must instead apply New York substantive law"); *IRB–Brasil Resseguros, S.A. v. Inepar Invs., S.A.*, 982 N.E.2d 609, 612 (N.Y. 2012) (Applying New York law to the question of the validity of choice of law and forum selection clauses in a guarantee, holding

that the "plain language of General Obligations Law § 5–1401 dictates that New York substantive law applies when parties include an ordinary New York choice-of-law provision" and "[e]xpress contract language excluding New York's conflict-of-law principles is not necessary").

49. As a matter of New York law, for the reasons already explained above, the Releases and Indemnifications contained in the Debt Assumption Agreements are plainly enforceable and are sufficiently broad as a matter of New York-law rules of contract construction to extend to and cover all of the claims that have been asserted by the bankrupt estate of VarigLog in the Brazilian Action. There simply are no Brazilian law issues that arise or that stand in the way of summary judgment disallowance of VarigLog's claims before this Court, as a matter of New York law.

CONCLUSION

For the foregoing reasons, Debtors respectfully request that the Court grant its motion for summary judgment.

Dated: July 29, 2022
New York, NY

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Exhibit A

Statement of Undisputed Material Facts

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
MatlinPatterson Global Opportunities Partners II L.P., *et al.*,	)	Case No. 21-11255 (DSJ)
	)	
Debtors.[5]	)	(Jointly Administered)

DEBTORS' STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1 IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS FILED BY THE BANKRUPTCY ESTATE OF VARIG LOGISTICA S.A.

[5] 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: 300 East 95th Street, Suite 102, New York, New York 10128.

Pursuant to Rule 56 of the Federal Rules of Procedure, made applicable to these proceedings under Rule 7056 of the Federal Rules of Bankruptcy Procedure and Local Rule 7056-1 of the United States Bankruptcy Court for the Southern District of New York, the above-captioned debtors and debtors-in-possession (collectively, the "***Debtors***") in these chapter 11 cases (the "***Chapter 11 Cases***") submits the following Statement of Undisputed Material Facts ("***SUMF*"**) in Support of Debtors' Motion for Summary Judgment on the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A.

A. <u>Debt Assumption Agreements</u>

1. Varig Logistica S.A. ("***VarigLog***") is a former, indirect subsidiary of the MatlinPatterson Global Opportunities Partners II L.P. and MatlinPatterson Global Opportunities Partners (Cayman) II L.P. (the "***MP Funds***") and Volo Logistics LLC ("***Volo LLC***").

2. A true and correct chart reflecting the organizational structure of the MP Funds and their investment subsidiaries and indirect subsidiaries in Brazil, is attached as **Annex A** to the *Declaration by Elisha D. Graff In Support of Motion for Summary Judgment on the Claims of Filed by the Bankruptcy Estate of Varig Logistica S.A*; *see also* In re Varig Logistica S.A., Case No. 09-15717-RAM, Adv. Pro. No. 20-01243-BKC-RAM-A, Exhibit A to VarigLog's Response and Objection to Debtors' Amended Motion to Set Limited Bar Date of September 10, 2021 for VRG, VarigLog, and HJDK Litigation Claims [Docket No. 70].

3. During 2008, VarigLog experienced financial difficulty, in connection with which two Debt Assumption Agreements, both dated December 31, 2008, were executed. *See* the Debt Assumption Agreements ("***Debt Assumption Agreements***") attached as **Exhibit B** to the Declaration of Elisha D. Graff, dated April 15, 2022, In Support of The Debtors' Objection to the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A. [Claim Nos. 4-6] [Docket No. 392].

4. Under the terms of the Debt Assumption Agreements, VarigLog assigned $250 million of debt that it owed to affiliated entities within the same MP Funds investment structure to a different affiliated entity, Volo dB, and was released from any further obligation to repay those loans. *See* Debt Assumption Agreements, ¶ 2.

5. Under the terms of the Debt Assumption Agreements, VarigLog, on behalf of itself and all successors and anyone claiming by or through it, released Volo LLC and CAT Aérea LLC ("***CAT***"), and their respective, related and affiliated parties, from all claims, including those that could be asserted in the future, "*based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to*" December 31, 2008, that in any way related to VarigLog (the "***Releases***"). *Id.* at ¶ 4(a)-(b).

6. Under the terms of the Debt Assumption Agreements, VarigLog, on behalf of itself and all successors and anyone claiming by or through it, agreed to indemnify and hold harmless Volo LLC, CAT and their related and affiliated parties from and against any and all claims and losses (including damages and expenses) incurred by any of them as the result of claims, by any person, relating to their transactions or relationship with VarigLog (the "***Indemnifications***"). *Id.* at ¶ 4(c).

7. The Debt Assumption Agreements are expressly governed by the substantive laws of the State of New York, without regard to New York's principles of conflicts of laws. *Id* at ¶ 9.

8. The Debt Assumption Agreements provide that the Supreme Court of the State of New York or the United States District Court for the Southern District of New York (as appropriate) have jurisdiction over any disputes as to the enforcement or interpretation of the Debt Assumption Agreements, save that Volo LLC and CAT may bring suit and enforce the Debt Assumption Agreements in Brazil, and that the parties irrevocably submit to the jurisdiction of the

courts in New York, waiving all objections which they may have had to the laying of venue in those courts, including any claim that those courts would be an inconvenient forum and any objections based on personal jurisdiction. *Id* at ¶ 8.

B. <u>VarigLog's Restructuring and Bankruptcy Proceedings</u>

9. In March 2009, VarigLog entered into judicial restructuring proceedings in Brazil. *See* VarigLog Verified Petition for Chapter 15 Relief and Recognition of a Foreign Proceeding, Docket No. 2, No. 09-15717-RAM (Bankr. S.D. Fla. 2009), at ¶ 24, attached as **Exhibit E** to the *Declaration of Elisha D. Graff in Support of the Debtors' Omnibus Opposition to (I) Motion by VRG to Convert These Cases to Chapter 7 Cases, and Prior Thereto, to Have This Court Abstain from Addressing VRG's Claims, or, in the Alternative, to Grant VRG Relief from the Automatic Stay; and (II) Motion by VarigLog to Convert These Cases to Chapter 7 Cases* [Docket No. 204].

10. 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*; *see also* Motion by Foreign Representative of Varig Logistica S.A. for (I) Abstention in Deference to Pending Foreign Proceeding or, Alternatively, for (II) Stay Relief [Docket No. 355] ("***VarigLog Abstention Motion***"), at ¶ 7.

11. VarigLog explained in its Chapter 15 Petition that 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* VarigLog Verified Petition for Chapter 15 Relief, at ¶ 13.

12. On September 27, 2012, VarigLog's judicial reorganization proceedings were converted into liquidation proceedings. *See* VarigLog Abstention Motion, ¶ 8.

13. Over a period of 13 years, VarigLog and its representatives have not included any of the debts assigned to Volo dB as obligations owed by VarigLog in the schedule of creditors required for the Brazilian reorganization and bankruptcy procedures.

14. Over a period of 13 years after they were executed, neither VarigLog nor any representative thereof in bankruptcy contended that the Debt Assumption Agreements or the Releases, Indemnifications or choices of law and forum contained within them were invalid or ineffective or unenforceable in any respect.

15. Over a period of 13 years after they were executed, neither VarigLog nor any representative thereof in bankruptcy commenced any action in any court in New York, pursuant to the Debt Assumption Agreements' forum selection provisions, disputing any aspect of the Debt Assumption Agreements, including their validity, effectiveness or enforceability.

C. The Brazilian Action

16. On May 11, 2020, VarigLog filed proceedings in the 1st Bankruptcy and Judicial Reorganization Court of the Judicial District of São Paulo against the Debtors seeking to hold them responsible for the entirety of VarigLog's debt to creditors (the "***Brazilian Action***"), with damages sought of R $1,760,275,540.75. *See* **Exhibit A** attached to the Declaration of Gregory S. Grossman In Support of Motion by Foreign Representative of Varig Logistica S.A. for (I) Abstention in Deference to Pending Foreign Proceeding or, Alternatively, for (II) Stay Relief [Docket No. 356].

17. The Brazilian Action relies virtually entirely on alleged facts, omissions, transactions, events and other occurrences that took place prior to December 31, 2008. *Id.*

18. The Brazilian Action makes no allegations in respect of the Debt Assumption Agreements. *Id.*

19. In response to the Brazilian Action, the Debtors filed an adversary proceeding in the Chapter 15 proceeding that VarigLog had commenced before the Bankruptcy Court for the Southern District of Florida. See *In re Varig Logistica S.A.*, Case No. 09-15717-RAM, Adv. Pro. No. 20-01243-BKC-RAM-A.

20. The Adversary Proceeding asked that Court, *inter alia,* to give effect to the releases and indemnifications in the Debt Assumption Agreements. *Id*., at ¶ 4.

21. The Bankruptcy Court for the Southern District of Florida declined to hear the Adversary Proceeding in Chapter 15 on the basis of comity to the Brazilian Court, expressing no opinion as to which Court should determine matters relating to the Debt Assumption Agreements now that the Debtors had filed Chapter 11 cases in New York. *Volo Logistics LLC v. Varig Logistica S.A. (In re Varig Logistica S.A.)*, 2021 WL 5045684 (Bankr. S.D. Fla. Oct. 29, 2021).

22. As a matter of Brazilian law and procedure, Debtors are precluded from raising the Debt Assumption Agreements as a defense in the Brazilian Action. *See* VarigLog Abstention Motion, at ¶ 67.

23. VarigLog has accepted that if it obtains a judgment against any of the defendants named in the Brazilian Action, in Brazil, it could only enforce that judgment in the United States where all of the defendants' assets are located. *See* Transcript of the October 19, 2020 hearing before Judge Mark in Case No. 09-15717-RAM, Exhibit F to VarigLog's Response and Objection to Debtors' Amended Motion to Set Limited Bar Date of September 10, 2021 for VRG, VarigLog, and HJDK Litigation Claims [Docket No. 70] Hr'g Tr. 39:3–14; 39:22–40:4; 72:16–73:1.

Dated: July 29, 2022
New York, NY

SIMPSON THACHER & BARTLETT LLP

/s/ Elisha D. Graff

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Counsel to the Debtors and Debtors-in-Possession

<u>Exhibit B</u>

Declaration of Elisha D. Graff

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 (DSJ)
Debtors.[1]	)	(Jointly Administered)

DECLARATION OF ELISHA D. GRAFF IN SUPPORT OF THE DEBTORS' MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS FILED BY THE BANKRUPTCY ESTATE OF VARIG LOGISTICA S.A.

I, Elisha D. Graff, being duly sworn, declare the following under penalty of perjury:

I am a partner in the law firm of Simpson Thacher & Bartlett LLP, with an office at 425 Lexington Avenue, New York, New York 10017. I am a member in good standing of the Bar of the State of New York, and there are no disciplinary proceedings pending against me. I submit this declaration, based on my knowledge of matters relating to the Debtors, in support of the Debtors' *Motion for Summary Judgment on the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A.*[2] (the "***Motion***").

Attached as **Annex A** hereto is a true and correct copy of the organizational chart referred to at ¶ 2 of the Statement of Undisputed Material Facts, which was previously exhibited to the Debtors' adversary proceeding filed in the Chapter 15 proceeding that VarigLog had commenced before the Bankruptcy Court for the Southern District of Florida. See *In re Varig Logistica S.A.*,

[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: 300 East 95th Street, Suite 102, New York, New York 10128.

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

Case No. 09-15717-RAM, Adv. Pro. No. 20-01243-BKC-RAM-A, Exh. A; *see also* Exhibit A to VarigLog's Response and Objection to Debtors' Amended Motion to Set Limited Bar Date of September 10, 2021 for VRG, VarigLog, and HJDK Litigation Claims [Docket No. 70].

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

Dated: July 29, 2022
New York, New York

/s/ Elisha D. Graff
Elisha D. Graff

ANNEX A

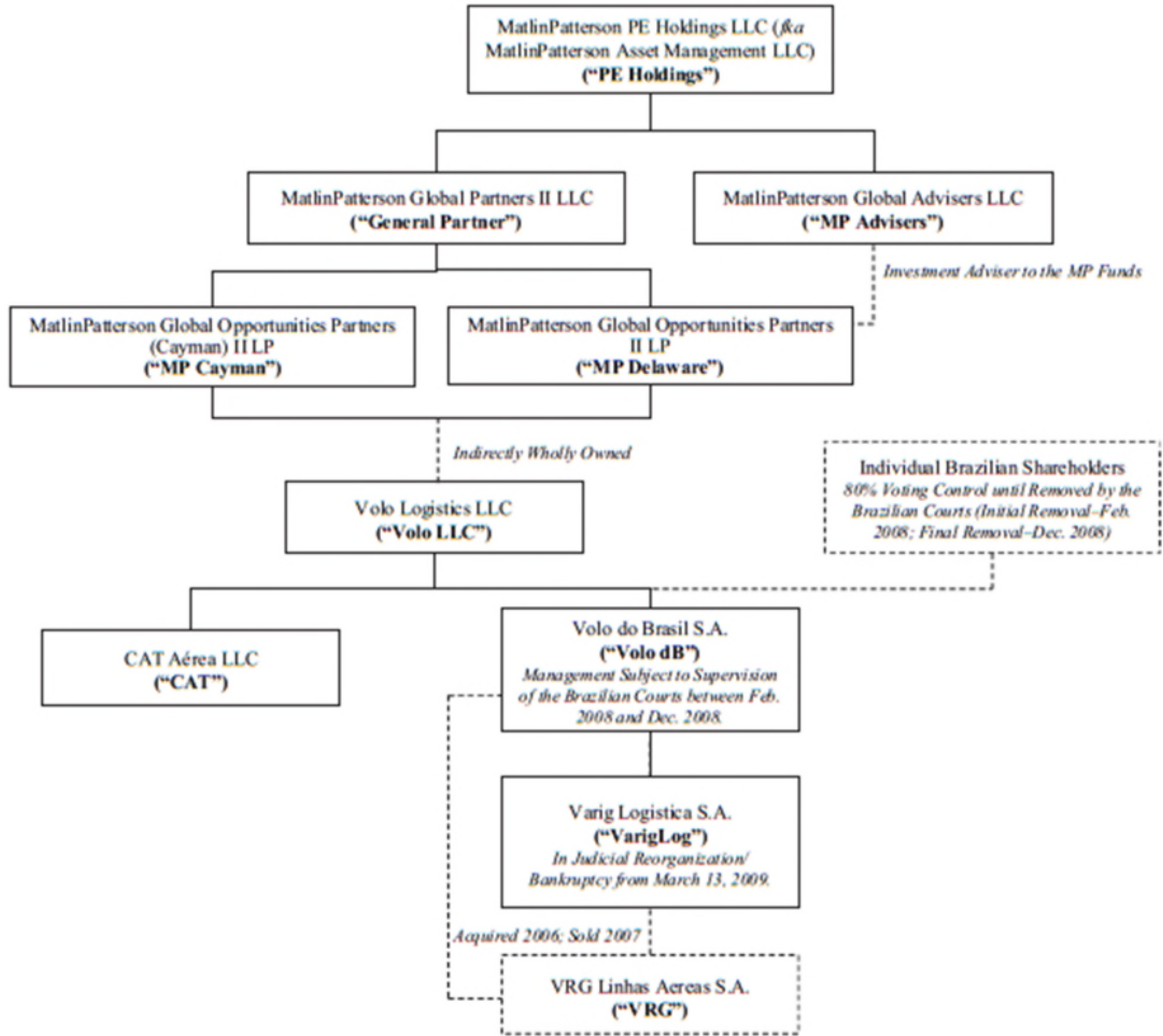

Exhibit C

Proposed Order

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 (DSJ)
Debtors.[1]	)	(Jointly Administered)

ORDER GRANTING SUMMARY JUDGMENT FOR DEBTORS ON THE CLAIMS FILED BY THE BANKRUPTCY ESTATE OF VARIG LOGISTICA S.A.

This matter is before the Court on the Motion of the Debtors for Summary Judgment on the Claims Filed by the Bankruptcy Estate of Varig Logistica S.A. (the "***Motion***"), dated July 29, 2022. This Court has heard the argument of counsel and considered the papers and materials submitted in support of and in opposition to the Motion. This Court has determined that, for all of the reasons stated in Debtors' Motion, Debtors are entitled to judgment as a matter of law. It is HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED.

Notwithstanding any rule to the contrary, this Order shall take effect immediately upon entry.

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

[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: 300 East 95th Street, Suite 102, New York, New York 10128.

New York, New York
Dated: ____________________, 2022

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HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE