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HEARING DATE: 02/01/2021 at 10:00 a.m.
OBJECTION DEADLINE: To Be Determined

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
LightSquared, Inc. et al.,[1]	Case No. 12-12080 (SCC)
Reorganized Debtors.	(Jointly Administered)

TO: THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

MOTION TO REOPEN CHAPTER 11 CASES FOR LIMITED PURPOSE OF REQUIRING HARBINGER AND ITS AFFILIATES' COMPLIANCE WITH THE CHAPTER 11 PLAN AND THIS COURT'S MARCH 27, 2015 CONFIRMATION ORDER, AND ENJOINING THEIR FURTHER VIOLATIONS OF THAT PLAN AND THIS COURT'S ORDER

[1] The debtors in these Chapter 11 Cases (defined below), along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), LightSquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629), and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 10802 Parkridge Boulevard, Reston, VA 20191.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

Statutes

TABLE OF AUTHORITIES
(Continued)

Page(s)

Other Authorities

Rules

Movants[2] are former directors, officers, shareholders, affiliates, consultants, and transaction counterparties of LightSquared, a company that emerged from the Chapter 11 Cases over which this Court presided from 2012 to 2016. The Harbinger Plaintiffs (which owned LightSquared before it filed for bankruptcy) sued Movants on June 8, 2020, in Supreme Court,

[2] This Motion is brought by Apollo Investment Fund IV, L.P., Apollo Overseas Partners IV, L.P., AIF IV/RRRR LLC, AP/RM Acquisition LLC, and ST/RRRR LLC (the "Apollo Funds"), Apollo Global Management, Inc. f/k/a Apollo Global Management, LLC (together with the Apollo Funds, "Apollo"), Andrew Africk, Marc Rowan, Michael Gross, Michael D. Weiner, Aaron J. Stone, and Jeffrey A. Leddy (the "Directors"), and Alexander Good and Randy Segal (the "Executives"). Rajendra Singh and CCTV One Four Holdings, LLC (the "CCTV Defendants") are joining in this Motion in a separate filing, and accordingly, this Motion includes the CCTV Defendants in the definition of "Movants" (with Apollo, the Directors, and the Executives). This Motion further refers to (i) each voluntary case under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Court on May 14, 2012 jointly administered under Case No. 12-12080 (SCC) (each a "Chapter 11 Case" and collectively, the "Chapter 11 Cases"); (ii) Plaintiffs Harbinger Capital Partners II, LP, Harbinger Capital Partners Master Fund I, Ltd., ("Harbinger Master"), Harbinger Capital Partners Special Situations Fund, L.P. ("Harbinger Special"), Harbinger Capital Partners Special Situations GP, LLC, Harbinger Capital Partners Offshore Manager, L.L.C., and Credit Distressed Blue Line Master Fund, Ltd. (collectively, the "Harbinger Plaintiffs"); (iii) Harbinger Capital Partners LLC ("Harbinger Capital Partners"), an investment advisory firm controlled by Philip A. Falcone ("Falcone"), acting on behalf of and through various affiliate funds, managed accounts, and direct and indirect wholly-owned subsidiaries, including but not limited to the Harbinger Plaintiffs (collectively, "Harbinger"); (iv) SkyTerra Communications, Inc. ("SkyTerra") refers to SkyTerra and its predecessors in interest, such as Mobile Satellite Ventures, LLC, Mobile Satellite Ventures, LP, and Mobile Satellite Ventures, GP, Inc. (collectively, "MSV") and its successor in interest, LightSquared, Inc. ("LightSquared", together with Skyterra and MSV, the "Debtors"), except where necessary to refer to these companies individually; (v) the Modified Second Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code, dated March 26, 2015 [ECF No. 2276-1] (the "Plan"); (vi) the Order Confirming Modified Second Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code, entered on March 27, 2015 [Dkt. No. 2276] (the "Confirmation Order"); (vii) the Stock Purchase Agreement, dated April 7, 2008, between Harbinger Master and Harbinger Special, on the one hand, and Apollo, on the other hand (the "SPA"); (viii) the September 16, 2013 Final Consent Judgment filed in Civil Action Nos. 12-CV-5028 and 12-CV-5027 (PAC) (S.D.N.Y.) (the "Final SEC Consent Judgment"); (ix) Centerbridge Partners, L.P. ("Centerbridge"), and (x) Fortress Credit Opportunities Advisors LLC ("Fortress"). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Plan, as applicable. ECF references herein refer to docket entries in *In re LightSquared Inc., et al.*, No. 12-12080 (Bankr. S.D.N.Y.) (SCC). Exhibits attached to the Declaration of Daniel S. Shamah are referred to as "Ex.," and exhibits attached to the Declaration of Jonathan Rosenberg are referred to as "JR. Ex."

New York County (Justice Peter Sherwood), asserting claims focused on LightSquared's business. Movants respectfully submit this motion ("Motion") for an order, substantially in the form of Exhibit A (the "Proposed Order"), briefly reopening these Chapter 11 Cases for the limited purpose of (i) issuing a declaration confirming that, under the assignment and release provisions in the Plan and Confirmation Order, the Harbinger Plaintiffs (and their affiliates) assigned all claims and released all non-fraud claims in the New York Supreme Court litigation as of December 7, 2015 (the Plan's Effective Date); and (ii) enjoining the Harbinger Plaintiffs and their affiliates and their respective officers and representatives from their current violations, and any future violations, of the Plan and Confirmation Order.

PRELIMINARY STATEMENT

1. Movants bring this motion to reopen these Chapter 11 Cases for the limited purpose of enforcing the LightSquared Plan and Confirmation Order that this Court approved and entered in March 2015, provisions of which the Harbinger Plaintiffs are violating by pursuing new LightSquared-related litigation against Movants in state court. This Court is uniquely suited to interpret and enforce the Plan it approved and its own Confirmation Order, given its years of hands-on involvement in administering these Chapter 11 Cases, and in conducting hearings and overseeing the negotiations that led to the Plan. It can do so in short order, and its determination on the threshold assignment and release issues that the Plan and Confirmation Order addressed will significantly streamline the state court litigation.

2. As the Court will recall, the early plan negotiations in these Chapter 11 Cases were wrought with animosity among the parties and an unwillingness to compromise. Ex. 1 (Decision Denying Plan Confirmation at 72). At the center of all the turmoil was Philip Falcone, who the Court admonished for being a "malevolent" bully who was unwilling to proceed cooperatively. *Id.* at 29, 71. Acting through Harbinger, Falcone launched several disruptive and meritless

lawsuits against the Federal Communications Commission ("FCC") and GPS industry that were detrimental to the Debtors' estates. Falcone used the threat of those lawsuits and his role as the Debtors' owner to hold up and extract as much value as he could from Plan negotiations between Harbinger, the Debtors, and the Debtors' other major stakeholders. It was only after the Debtors moved to halt this litigation rampage that Falcone agreed to vital terms in the Plan and Confirmation Order requiring Harbinger (including any "affiliate") to assign to reorganized Debtor LightSquared LP ("New LightSquared," now known as "Ligado") all lawsuits and claims relating to the Debtors or the Debtors' business. In exchange, Falcone received valuable consideration, including approximately 45% of Ligado's post-bankruptcy equity. The Plan was consummated in December 2015, and these cases were closed in April 2016.

3. Falcone's Harbinger Plaintiffs began violating the Plan and Confirmation Order's restrictions on December 21, 2017. On that date, they sued the Apollo Funds, which owned a stake in SkyTerra until Harbinger purchased their SkyTerra stock in 2008, their affiliates, and six former SkyTerra directors in New York state court (the "2017 Harbinger Litigation"). The defendants in that case (who make up most of the Movants) responded by filing with this Court an earlier version of this Motion. But at Ligado's request, the Harbinger Plaintiffs voluntarily dismissed that lawsuit in June 2019, and Apollo and the Directors agreed to prospective tolling and withdrew without prejudice their earlier Motion. They did so because Ligado did not want to risk Harbinger's litigation interfering with its then-pending application for FCC approval of its broadband network. But after Ligado obtained that approval in April 2020, Falcone caused the Harbinger Plaintiffs to refile its litigation on June 8, 2020 (with additional claims and defendants) (the "2020 Harbinger Litigation," and with the 2017 Harbinger Litigation, the "New Harbinger Litigation"). This New Harbinger Litigation violates the Plan and Confirmation Order's plain terms in two ways.

4. *First*, it violates the Plan's Assignment Provision. Under the Plan, Harbinger, on behalf of itself and all of its "affiliates," assigned to Ligado any right to commence any New Action, defined broadly to encompass any lawsuit related to the Debtors, the Debtors' business, the securities of, or interests in, the Debtors, or the Chapter 11 Cases. The Harbinger Plaintiffs (all of which are Harbinger affiliates) allege in their complaint (the "Complaint") that Harbinger only invested in the Debtors' equity and debt (and in another entity called TVCC One Six Holdings LLC ("TVCC")) because Movants allegedly concealed a GPS-interference issue with the Debtors' spectrum technology. That same GPS-interference issue was the subject of Harbinger's lawsuits against the FCC and the GPS industry that Falcone pursued during the Chapter 11 Cases. Under the Plan's broad terms, Harbinger and its affiliates assigned to Ligado the right to pursue all of those litigations related to LightSquared's business—both the existing cases and any future New Actions. The Harbinger Plaintiffs are therefore violating the Plan and Confirmation Order by pursuing the claims in the New Harbinger Litigation.

5. *Second*, the Complaint's non-fraud claims violate the Plan's third-party release. Harbinger agreed in the Plan to release the Debtors' former shareholders, affiliates, officers, directors, and consultants. 15 of the 16 Movants fit into one or more of these categories. And all but two of the eight claims that New York law recognizes[3] in the New Harbinger Litigation are non-fraud claims that were expressly released under the Plan (the "Released Claims").

6. Falcone was well aware that the New Harbinger Litigation was dead on arrival, so

[3] Two of the 10 claims in the Complaint are for "civil conspiracy," which New York law does not recognize. *See Troy-McKoy v. Mount Sinai Beth Israel*, 182 A.D.3d 524, 524 (N.Y. App. Div. 2020) ("[t]he civil conspiracy claim fails because there is no such independent cause of action in New York"); *Errant Gene Therapeutics, LLC v. Sloan-Kettering Inst. for Cancer Research*, 174 A.D.3d 473, 474 (N.Y. App. Div. 2019) ("civil conspiracy is not recognized as an independent tort in this State . . . allegations in the complaint herein charging conspiracy are deemed part of the remaining causes of action to which they are relevant").

he schemed to rewrite the Plan. That scheme required the complicity of Ligado and its major stakeholders Centerbridge and Fortress, which they had consistently refused to provide Falcone since he sued Apollo and the Directors in late December 2017. In fact, representatives of Ligado and its major stakeholders repeatedly told Movants' counsel from early 2018 to mid-2020 that they believed the claims in the New Harbinger Litigation ***were assigned*** to Ligado in the Plan. But their wherewithal to resist Falcone's self-interested demands changed in September 2020, when Ligado needed Falcone's cooperation to complete its multi-billion-dollar out-of-court restructuring. The quid pro quo Falcone extracted for his cooperation was Ligado's and its major stakeholders' agreement not to oppose Harbinger's position that the New Harbinger Litigation was not assigned by Harbinger to Ligado in the Plan—contrary to Ligado's actual view and the plain language of the Plan and Confirmation Order. That unabashed "papering the file" is incorporated in the October 2020 "Claims Understanding Agreements," under which (i) Ligado, Centerbridge, and Fortress agree that they do not own Harbinger's litigation claims and will not assert that the claims "were released or assigned," (ii) Ligado agrees to reassign the claims back to the Harbinger Plaintiffs if Ligado were found to own the claims, and (iii) Ligado agrees to oppose this Motion.

7. But while Falcone was able to strong-arm Ligado and its major stakeholders into reading from his litigation script, he can neither rewrite the Plan nor revise the history that led to the Plan's broad litigation assignment. This Court is uniquely positioned to understand that history—having presided for several years over Falcone's litigation reign of terror during the Chapter 11 Cases—and the importance to LightSquared of stripping Falcone of his ability to bring similar such actions. And it is crucial that this Court declare that the 2015 assignment by Harbinger to Ligado occurred, even though Ligado agreed in the Claims Understanding Agreement to reassign the litigation claims back to Harbinger as of October 2020. That is because if Ligado

owned the claims from December 2015 through October 2020, the state court almost certainly would find that the applicable New York statute of limitations had expired before Ligado reassigned the claims back to Harbinger. Thus, by interpreting and enforcing its own Confirmation Order, this Court will provide the necessary framework for the state court to assess the nature and extent of the Harbinger Plaintiffs' standing and eligibility to bring their claims.

8. Ligado's anticipated opposition to this Motion warrants zero deference, because it will not be based on any actual concern for Ligado's interests. Rather, it will be a preprogrammed pleading borne of contractual obligation. In fact, Ligado's counsel assured Movants' counsel during the summer of 2020 that Ligado would have no problem with a reopened bankruptcy once it completes its restructuring. And truth be told, Ligado would benefit greatly by this Court rescuing it from the distraction and expense that the New Harbinger Litigation threatens to impose. The Court should therefore exercise its ongoing jurisdiction to enforce its Confirmation Order, and hold Falcone and the Harbinger entities he controls to the bargain they struck in the Plan.

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334.[4] The Court retained jurisdiction in the Confirmation Order to issue orders in aid of execution, enforcement, implementation, and consummation of the Plan and Confirmation Order, including jurisdiction to enforce their assignment and release provisions. Ex. 3 (Confirmation Order, ¶ 48); Ex. 4 (Plan, § XI). This is a core proceeding under 28 U.S.C. § 157(b)(2). Because Movants seek to enforce this Court's order, the Court may hear this matter via motion rather than an adversary proceeding.[5]

[4] *See Luan Inv. S.E. v. Franklin Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230–32 (2d Cir. 2002) (holding that bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders).

[5] *See In re Johns-Manville Corp.*, 534 B.R. 553, 562 (Bankr. S.D.N.Y. 2015) (adversary proceeding not required to enforce confirmation order).

10. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested are Bankruptcy Code sections 105(a) and 350(b), Federal Rule of Bankruptcy Procedure 5010, and Local Bankruptcy Rule 5010-1.

BACKGROUND

A. The Debtors File for Bankruptcy in this Court and Harbinger Commences Litigation Against the GPS Industry and the FCC

11. The Court is familiar with the Debtors' background from the lengthy Chapter 11 Cases. *See generally* Ex. 5 (First Day Declaration); Ex. 6 (General Disclosure Statement). The Debtors' bankruptcy filings were precipitated by the FCC's February 2012 decision to suspend the license for the Debtors' proposed network, following the late-2010 objection by the U.S. GPS Industry Council, a GPS industry trade association, that LightSquared's proposed broadband network would interfere with millions of GPS receivers. Ex. 5 (First Day Declaration, ¶¶ 57, 59–63); Ex. 6 (General Disclosure Statement at 28–31). Harbinger held approximately 96% of LightSquared's outstanding common stock when the Debtors filed for bankruptcy. Ex. 5 (First Day Declaration ¶ 16); Ex. 6 (General Disclosure Statement at 18).

12. Once in chapter 11, Harbinger launched a scorched-earth litigation strategy to hold third parties responsible for its investment losses. On August 9, 2013, five of the six Harbinger Plaintiffs commenced an action against numerous GPS-industry companies, seeking to hold them liable for belatedly and improperly protesting GPS-interference from LightSquared's spectrum usage, and stalling LightSquared's planned nationwide broadband network. Ex. 7 (Disclosure Statement at 43); *see also* Ex. 12 (GPS Compl. ¶¶ 93–96). On July 11, 2014, the same five Harbinger Plaintiffs also sued the United States of America in the FCC Action, asserting that the FCC had violated a contract with certain Harbinger Plaintiffs by suspending the license for the Debtors' proposed network. Ex. 7 (Disclosure Statement at 43); Ex. 13 (FCC Compl.).

13. The Debtors believed that certain claims in the Harbinger Plaintiffs' FCC Action and GPS Action belonged to them. The Debtors therefore filed (a) their own complaint on November 1, 2013, against the GPS Defendants, asserting the same claims and damages, Ex. 7 (Disclosure Statement at 43); and (b) a motion with this Court on October 8, 2014, to stay the FCC Action and GPS Action until the effective date of any plan of reorganization or until a motion for a permanent injunction could be ruled upon, *see* Ex. 8 (the "Stay Motion"). The Debtors felt that Harbinger was "attempting to jump the Bankruptcy Code's priority scheme" and "usurp claims or causes of action belonging to the estates and spawn satellite litigation that would interfere with reorganization efforts," in order to recoup their investments in LightSquared by "circumventing the bankruptcy process." Ex. 8 (Stay Motion, ¶¶ 1, 4, 6).

14. Between August 30, 2013, and May 2014, the Debtors proposed a plan of reorganization and three subsequent amendments to that plan, none of which the Court confirmed. Ex. 7 (Disclosure Statement at 17–19). The Court ultimately appointed the Honorable Robert D. Drain to mediate [*See* ECF No. 1557]. During several months of mediation, numerous parties in interest, including Harbinger, filed competing plans for the Debtors' reorganization, none of which the Court confirmed. Ex. 7 (Disclosure Statement at 15, 19–23).

B. The Plan Support Agreement and Formation of the Plan

15. On December 10, 2014, peace broke out among several of the major creditor constituencies. Under the Plan Support Agreement, the Debtors, Harbinger, Centerbridge, and Fortress (the "Plan Proponents") co-sponsored the Plan under which the various Harbinger litigations would be resolved or assigned to Ligado, broad third-party releases would be granted, and the Debtors' business operations and capital structure would be reorganized with the Plan Proponents emerging as the major Ligado equity holders. Two Plan provisions are particularly relevant here: the Assignment Provision and the Plan Release.

16. *First*, Harbinger agreed to contribute to Ligado the GPS Action, the FCC Action, and ***all*** "New Actions" (the "Assignment Provision"). Ex. 3 (Confirmation Order, ¶ 23(b)); Ex. 4 (Plan, § IV.P). The Plan broadly defines "New Actions" to include "any unasserted claim or Cause of Action arising out of, relating to, or in connection with, in any manner, the Chapter 11 Cases, the Debtors or the Debtors' businesses, or any obligations or securities of, or interests in, the Debtors for things occurring through and including the date of termination of the Plan Support Agreement." Ex. 4 (Plan, § I.A.144).

17. The Assignment Provision was the cornerstone of the settlement with Harbinger, and was the focus of a large portion of the eight-day March 2015 confirmation trial. The Debtors repeatedly emphasized in their briefs in support of confirmation the benefit that the Assignment Provision would provide Ligado in resolving the overhang of the Harbinger Litigations. Ex. 10 (Reply Memorandum in Support of Plan Confirmation ¶¶ 10, 14, 28, 110, 117, 121, 128–30). In confirming the Plan, the Court noted that Harbinger's contribution of "multiple" claims was a significant component of the Plan, and that Harbinger was "giving up [its] rights to . . . act in a noncooperative fashion." Ex. 2 (Confirmation Hearing Transcript at 62, 69).

18. The Plan further reflects that Harbinger complying with the Assignment Provision was part of the consideration Harbinger agreed to pay under the Plan in exchange for (among other things) approximately 45% of the equity in Ligado (*i.e.*, New LightSquared):

> *Treatment*: In full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Prepetition Inc. Facility Subordinated Claim and the termination of Liens securing such Claims ***and Harbinger's contribution to New LightSquared of the Harbinger Litigations*** . . . each Holder of an Allowed Prepetition Inc. Facility Subordinated Claim shall receive Plan Consideration in the form of such Holder's pro rata share of (i) New LightSquared Series A Preferred Interests . . . and (ii) 44.45% of the New LightSquared Common Interests. Ex. 4 (Plan, § III.B.6.c) (emphasis added).

19. The Plan also contains a successors-and-assigns provision that binds all Harbinger affiliates to Harbinger's obligations under the Plan, including the Assignment Provision: "[e]xcept

as expressly set forth in the Plan, the . . . **obligations** of any Entity named or referred to in the Plan shall be binding on . . .any . . . **affiliate**. . . ." *See* Ex. 4 (Plan, § XII.D) (emphasis added).

20. The Confirmation Order likewise provided that the Plan settled all claims and causes of action in the Stay Motion, and the Stay Motion was deemed withdrawn with prejudice only upon the occurrence of the effective date of the Plan ***and*** "Harbinger's irrevocable assignment of all of the Harbinger Litigations to New LightSquared." Ex. 3 (Confirmation Order, ¶ 6(b)).

21. *Second*, Harbinger agreed in the Plan to a broad release of "any and all claims":

> . . . ***whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, whether for tort, contract***, violations of federal or state securities laws, or otherwise, that each Releasing Party would have been legally entitled to assert (whether individually or collectively), ***based on or relating to, or in any manner arising from, in whole or in part, the Debtors . . . the prepetition or postpetition purchase, sale, or rescission of the purchase or sale of any debt or Security of the Debtors . . . the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan***, the business or contractual arrangements between any Debtor and any Released Party . . . upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Ex. 3 (Confirmation Order, ¶ 35); Ex. 4 (Plan, § VIII.F) (emphasis added) (the "Plan Release").

22. The Plan Release covered all Released Parties, defined to include any Releasing Party (including Harbinger), and any **former** shareholder, affiliate, director, officer, or consultant of the Debtors. Ex. 4 (Plan, § I.A.250). 15 of the 16 Movants are Released Parties (the "Released Movants"): (a) the Apollo Funds are former shareholders because they allegedly owned the Debtors' equity; (b) the Directors are all former directors of the Debtors; (c) Apollo Global Management LLC is a former affiliate, because the Complaint includes it with the Apollo Funds as an affiliate of the Debtors; (d) Alexander Good (LightSquared's former CEO and President) and Randy Segal (LightSquared's former Senior VP, General Counsel, and Secretary) are both former officers of the Debtors; and (e) Rajendra Singh is, according to the Complaint, a former telecommunications engineering consultant of SkyTerra. *See e.g.*, Ex. 16 (Compl. ¶¶ 37–56). Harbinger consented to the Plan Release in its capacities as Plan Proponent and Holder of Claims

and Equity Interests in the Debtors. Ex. 4 (Plan, §§ VIII.F; I.A.107).

23. The Court confirmed the Plan on March 27, 2015. As provided in the Plan, LightSquared was converted to "New LightSquared" (subsequently renamed "Ligado"). Ex. 4 (Plan, § IV.B.2.a). Centerbridge, Fortress, and the JPM Investment Parties became Ligado's controlling stakeholders. Ex. 4 (Plan, §§ IV.B.2.b, IV.B.2.c.ii). And Harbinger received approximately 45% of the equity in Ligado. Ex. 4 (Plan, § III.B.6.c). The Confirmation Order is no longer appealable, and on December 7, 2015, the Plan's "Effective Date," the Plan was substantially consummated as to each LightSquared entity. *See* ECF No. 2433. On April 6, 2016, the Court entered the Order of Final Decree [ECF No. 2473] and the Chapter 11 Cases were closed.

C. The Harbinger Plaintiffs Are Under Falcone's Common Control

24. The Harbinger Plaintiffs are six entities within the Harbinger family of funds that owned debt or equity in the Debtors. Ex. 12 (GPS Compl. ¶¶ 132–34, 229); Ex. 16 (Compl. ¶¶ 16, 157). They are indirect subsidiaries and affiliates of Harbinger Capital Partners, an investment advisory firm that Falcone controls. Ex. 1 (Decision Denying Plan Confirmation at 15). Upon information and belief, at all relevant times Falcone also directed all Harbinger entities' investment decisions and decided how investments were allocated among those entities. This control included directing Harbinger's conduct in the Chapter 11 Cases and regarding the Plan, as is clear from the early confirmation proceedings and Falcone signing the Plan on Harbinger's behalf.[6] Falcone also recently reaffirmed that he controls the Harbinger Plaintiffs and HGW US Holding Company, L.P. (through which he currently owns Harbinger's Ligado equity) by signing the Claims Understanding Agreements on their behalf (as Managing Member or CEO). JR. Exs. 3, 4.

[6] *See* Ex. 9 (Oct. 2014 Hearing Transcript at 58) (the Court referring to Falcone and Harbinger together as "the brainchild, the sponsor, the driving force, the life passion" of LightSquared's reorganization process); Ex. 4 (Plan at 107).

25. Falcone had also previously acknowledged that he controls and directs Harbinger's investment activities in a 2013 consent decree with the SEC. There, Falcone admitted causing a Harbinger entity to extend below-market loans to him so he could pay his personal tax liability. Ex. 18 (Final SEC Consent Judgment, ¶¶ 2–21). As part of the penalty for this and other admitted misconduct in directing Harbinger's actions, *see*, *e.g. id*. ¶¶ 34, 36, 40, Falcone was enjoined "from acting as or [] associat[ing] [with] any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," but was allowed to continue controlling the Harbinger entities' activities. Ex. 18 (Final SEC Consent Judgment, ¶¶ I(A)–(B), (D)–(E), Schedules A and B). The consent decree identifies all but two of the Harbinger Plaintiffs as either a Harbinger Adviser with which Falcone was permitted to remain affiliated, or a Harbinger Fund for which Falcone and Harbinger Capital Partners were required to satisfy Harbinger investor redemption requests. (*Id*. ¶ I(B)–(C) & Schedules A, B).

26. A recently unsealed arbitration award revealed that Falcone rewarded his SEC enforcement counsel's "super" job in salvaging his ability to continue controlling Harbinger by refusing to pay more than $13 million in attorneys' fees.[7]

D. The Harbinger Plaintiffs Violate the Plan and Confirmation Order By Suing Movants in State Court

27. In early December 2015, Ligado settled the LightSquared GPS Action and paid certain GPS Defendants attorneys' fees in exchange for their promise to lodge only limited objections to Ligado's FCC application for a narrower version of its network. Ex. 16 (Compl. ¶¶ 205–207). The Harbinger Plaintiffs allege that this "one-sided" and "inadequate" settlement prompted them to investigate the basis for the settlement, resulting in them finding in May 2016 a

[7] *See* Ex. 21 (Mar. 9, 2020 *Reuters* Article) (also noting that New York State Supreme Court Justice Arthur Engoron froze Falcone's assets in enforcing that award).

SkyTerra patent application that identified GPS-interference issues and had been publicly available since ***at least 2007*** (and that Harbinger remarkably claims it failed to review during the "extensive due diligence" it conducted before investing $1.9 billion in LightSquared or during the five years it owned LightSquared). Ex. 16 (Compl. ¶¶ 182–83, 208–10).

28. Harbinger did nothing with this alleged revelation during 2016 and for almost all of 2017. Then on the evening of December 21, 2017—the Thursday before Christmas weekend—the Harbinger Plaintiffs filed the 2017 Harbinger Litigation against Apollo and the Directors in New York state court. Ex. 15 (Second Tolling Agreement, at 1). Apollo and the Directors responded by filing in this Court on February 14, 2018, an earlier similar version of this Motion. *Id.* at 2. Ligado requested, however, that the parties stay their hands so that Harbinger's lawsuit and a reopened bankruptcy would not interfere with Ligado's efforts to obtain FCC approval for a modified version of its network. To accommodate Ligado—thereby derivatively benefitting Harbinger, which still owned approximately 45% of Ligado's equity—Apollo and the Directors agreed to several stays from February 14, 2018, through June 12, 2019, and ultimately entered a tolling agreement under which the Harbinger Plaintiffs voluntarily dismissed their complaint, and Apollo and the Directors withdrew the bankruptcy court motion without prejudice. *Id*. at 2–3.

29. In beseeching Apollo and the Directors to defer this Motion until after Ligado obtained FCC approval for its proposed broadband license, both Ligado and its major stakeholders provided repeated assurances that they (i) agreed that Harbinger had assigned its litigation against Movants in the Plan, and (ii) would ultimately support (or at least not oppose) the Motion:

a. In January 2018, Ligado's counsel Andrew Leblanc asked if Apollo and the Directors would agree to a stay. *Id*. ¶ 6. He indicated that Ligado's senior management was generally supportive of Apollo's and the Directors' position, and that it was Ligado's intent in the 2015 bankruptcy proceedings to bar Harbinger from bringing any additional LightSquared-related litigation. *Id*. ¶ 7.

b. On February 12, 2018, Centerbridge's Vivek Melwani explained that "the business

deal" the Plan Proponents struck was that Harbinger would assign to Ligado the type of claims it was now asserting against Movants, and that Harbinger would provide the broadest possible assignment. Rosenberg Decl. ¶ 10; Suydam Decl. ¶ 3.

c. On February 13, 2018, Melwani repeated that he had been heavily involved in negotiating the business deal memorialized in the Plan, which was that Harbinger would receive approximately 40% of Ligado's equity in exchange for assigning to Ligado all its rights to bring any Debtor-related litigation. Suydam Decl. ¶ 4. He also committed that if Apollo and the Directors agreed to stay or toll the Harbinger litigation, Centerbridge would try to get Ligado to support this Motion, or Centerbridge itself would file papers supporting the Motion. *Id*. That same day, Centerbridge's counsel reiterated Melwani's statements and commitments. Rosenberg Decl. ¶ 11.

d. Also on February 13, 2018, Fortress's counsel reported that Fortress's understanding of the deal underlying the Plan was that Harbinger agreed to contribute to Ligado any claims that it had concerning LightSquared or its predecessors, in exchange for approximately 40% of Ligado's equity. Suydam Decl. ¶ 5. He added that the 2017 Harbinger Litigation asserted the types of claims that Fortress understood Harbinger to have contributed to Ligado, and that Fortress would support the Bankruptcy Motion if Ligado did not do so. *Id*.

30. Ligado made similar assurances later in 2018 and in 2019 when it asked Apollo and the Directors again to defer the litigation. *See, e.g.*, Rosenberg Decl. ¶ 15 (December 3, 2018: Ligado is inclined to support the Motion); ¶ 22 (June 11, 2019: once Harbinger was no longer in a position to hurt Ligado, such as by undermining Ligado's FCC application, Ligado would support the Motion). And Ligado's counsel reported that Harbinger's reaction each time was the same—it demanded that Ligado agree to oppose the Motion. *Id*. ¶¶ 17, 22. Ligado repeatedly refused this demand. *Id*. According to Ligado's counsel, Falcone was directly involved in these negotiations, and no stay agreement could be reached without "Phil's" signoff. *Id*. ¶¶ 9.

31. On April 20, 2020, the FCC approved Ligado's application for its modified network. Ex. 20 (FCC Approval). As a result, Harbinger's approximately 45% equity stake in Ligado, Ex. 4 (Plan, § III.B.6.c), *supra* ¶ 18, could become extremely valuable in the near future.

32. Still, the Harbinger Plaintiffs filed the 2020 Harbinger Litigation on June 8, 2020. Indeed, they broadened it, adding as defendants the Executives, the CCTV Defendants, and four Columbia Capital LLC entities that the Harbinger Plaintiffs have since voluntarily dismissed. The

Harbinger Plaintiffs allege that Movants induced the Harbinger Plaintiffs to invest $1.9 billion in LightSquared from 2004-2010—including purchasing Apollo's SkyTerra equity under the 2008 SPA—by concealing information that was publicly available, namely, that certain uses of SkyTerra's spectrum could interfere with GPS devices. Ex. 16 (Compl. ¶ 210).

33. The Harbinger Plaintiffs further allege that Movants (a) caused SkyTerra to misrepresent in its SEC filings and investor materials that SkyTerra's proposed ancillary terrestrial component ("ATC") network was viable; and (b) misrepresented in the SPA that they were not aware of information rendering SkyTerra's registration statement false or misleading even though it did not discuss the GPS-interference issue. Ex. 16 (Compl. ¶ 280). They also contend that the CCTV Defendants and Alexander Good induced Harbinger to buy TVCC—which owned spectrum contiguous to SkyTerra's—when they allegedly knew of GPS-interference issues with SkyTerra's spectrum. Ex. 16 (Compl. ¶ 284).

34. The allegations in the New Harbinger Litigation are the mirror image of those the Harbinger Plaintiffs made in the GPS and FCC Actions. All three actions are based on Harbinger's alleged "justifiable reliance" on "material misrepresentations," "omissions," "misstatements," "concealments," or "agreements" made by Harbinger's flavor-of-the-day defendants regarding LightSquared's business and its ability to operate the ATC network. *See* Ex. 16 (Compl. ¶¶ 194, 211, 224); Ex. 12 (GPS Compl. ¶¶ 230, 239, 248); Ex. 13 (FCC Compl. ¶¶ 12, 56). In the New Harbinger Litigation ***and*** the GPS Action, Harbinger claims it was duped by the relevant defendants' "fraudulent scheme" into purchasing shares and debt instruments in LightSquared, allegedly resulting in $1.9 billion in damages. *See* Ex. 16 (Compl. ¶¶ 194, 211, 224); Ex. 12 (GPS Compl. ¶¶ 223, 228, 243). Similarly, in the FCC Action, Harbinger alleged that it relied on its agreement with the FCC when it decided to acquire SkyTerra to construct the ATC network, only

to lose its investment when LightSquared declared bankruptcy because it could not build the network. Ex. 13 (FCC Compl. ¶¶ 45, 125–26, 136, 140–41).

35. The Harbinger Plaintiffs assert ten causes of action against Movants in the New Harbinger Litigation: against Apollo, the Directors, and the Executives for fraud, civil conspiracy, and negligent misrepresentation; against AGM and the Apollo Funds for breach of fiduciary duty, breach of contract (the SPA), and unjust enrichment (via the SPA); against the Directors for aiding and abetting breach of fiduciary duty; against the CCTV Defendants and Good for fraud and civil conspiracy in connection with the TVCC transaction; and against the CCTV Defendants for unjust enrichment in connection with the TVCC transaction. Ex. 16 (Compl. ¶ 30).

E. The 2020 Plan Rewriting Agreements

36. After the Harbinger Plaintiffs filed the 2020 Harbinger Litigation on June 8, 2020, Ligado again asked the parties to stay the litigation and thus put off this Motion. Ligado had received its FCC approval, but now had a new issue: it needed new financing and a restructuring to avoid bankruptcy. On June 12, 2020, Ligado's counsel reported that Ligado was planning to restructure and would prefer not to deal with the litigation at the same time. Rosenberg Decl. ¶ 26. He added that Ligado and its major stakeholders would demand as part of any restructuring that Harbinger end this litigation for good. *Id*. ¶¶ 26-27. After significant resistance from Harbinger, the parties ultimately agreed to stay the litigation until November 15, 2020. *Id*. ¶ 31.

37. Then, on October 23, 2020, Ligado's counsel informed Movants' counsel that Ligado had completed its refinancing, but had been dead wrong about its ability to persuade Falcone to drop the New Harbinger Litigation. *Id*. ¶ 33. To the contrary, Falcone ended up having significant leverage, because Ligado, Fortress, and Centerbridge needed Harbinger's consent to the restructuring. Without that consent, Falcone could force Ligado into bankruptcy. *Id*.

38. Four days later, Movants received the October 23, 2020 Claims Understanding

Agreements—one between Ligado and Harbinger, the other between Centerbridge, Fortress, and Harbinger. *Id.* ¶ 34. These Plan rewriting agreements were designed to make it appear as if Harbinger had never really assigned the claims in the New Harbinger Litigation in the Plan. The agreement between Ligado and Harbinger provides that, in exchange for Harbinger consenting to the restructuring, Ligado agrees that (a) it "owns no rights, title or interest in" the claims the Harbinger Plaintiffs have asserted in the New Harbinger Litigation, (b) it will not assert that the claims "were released or assigned" in the Plan, (c) to the extent Ligado in fact owns the claims, it assigns them to the Harbinger Plaintiffs, and (d) Ligado will not support any motion to reopen this bankruptcy and will file a statement in opposition (if requested by Harbinger). JR. Ex. 3. Centerbridge and Fortress likewise separately agreed that they would not assert that the Harbinger Plaintiffs' claims were released or assigned. JR. Ex. 4. Thus, Falcone leveraged his position in the restructuring to force Ligado and its major stakeholders' cooperation with a litigation that Ligado had repeatedly said it did not want and did not believe Harbinger owned.

39. But even the Claims Understanding Agreements provide compelling evidence that Harbinger actually did assign the New Harbinger Litigation in the Plan. Harbinger concedes that it "do[es] not own . . . any claims or causes of action arising from, or relating to, Ligado (or its assets or operations), or the sale and/or purchase of the debt, equity and/or securities of SkyTerra," except for the claims against Movants. JR. Exs. 3, 4. The only reason Harbinger would not own those claims is that it assigned them to Ligado in the Plan, and there is no exception in the Plan's Assignment Provision for the claims Harbinger is attempting to assert against Movants.

ARGUMENT

I. MOVANTS HAVE STANDING TO REQUEST THE LIMITED REOPENING OF THE CASE FOR THE SOLE PURPOSE OF ENFORCING THE TERMS OF THE PLAN AND CONFIRMATION ORDER.

40. Bankruptcy Rule 5010 authorizes any "party in interest" to seek to reopen a closed

case. Fed. R. Bankr. P. 5010. While "party in interest" is not defined in the Bankruptcy Code or Rules, courts interpret the term broadly "to insure fair representation of all constituencies impacted in any significant way by a Chapter 11 case."[8] Party-in-interest standing exists when a party has a "legally protected interest that could be affected by" a plan of reorganization.[9]

41. Movants all fall comfortably within this broad definition of "party in interest," and thus have standing to bring this Motion to reopen the Chapter 11 Cases for the limited purpose of vindicating that interest. Absent the Court's adjudication of the assignment issue, the parties and the state court will have no clarity as to who owned these claims from December 2015 through October 2020. This is extremely important to Movants' expected motion to dismiss based on the statute of limitations for fraud, which turns on "inquiry notice"—*i.e.*, the two-year limitations period begins to run when the plaintiff is aware of information such that a person of ordinary intelligence would have investigated and "could have discovered the fraud in the exercise of reasonable diligence."[10] To fairly litigate and determine that "inquiry notice" question, the parties and the state court need to know who owned the claims and when, and thus whose knowledge is relevant. If, as Movants show in this Motion, Ligado owned the claims beginning on the December 7, 2015 Effective Date of the Plan, then it would be Ligado's inquiry notice, not Harbinger's, that would be at issue beginning on that date. And that would significantly affect the state court's adjudication framework, because all the "facts" Harbinger alleges it did not learn until 2016 were

[8] *In re Johns-Manville Corp*., 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984); *see also In re Stone Barn Manhattan LLC*, 405 B.R. 68, 74 (Bankr. S.D.N.Y. 2009).

[9] *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 210 (3d Cir. 2011); *see also In re D'Antignac*, 2013 WL 1084214 at *2 (Bankr. S.D. Ga. 2013) (holding that "party in interest" is one that has "a stake in the outcome of the bankruptcy case" and "is generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceedings").

[10] *Aozora Bank, Ltd. v. Credit Suisse Grp*., 144 A.D.3d 437, 438 (N.Y. App. Div. 2016).

in the possession all along of Ligado—the successor to the alleged fraudster, SkyTerra, the entity that allegedly concealed the GPS-interference issue as to which Harbinger asserts no pre-purchase knowledge.[11] And yet, Ligado did not bring the claims within two years of the December 7, 2015 assignment (or ever).

42. Harbinger thus would have no leg to stand on, and the state court would almost certainly grant Movants' motion to dismiss Harbinger's $1.9 billion lawsuit.[12] The Released Movants also have standing to enforce their protected status as "Released Parties" under the Plan.[13]

II. THE NEW HARBINGER LITIGATION IS CONTRARY TO BOTH THE ASSIGNMENT AND THE RELEASE PROVISIONS IN THE PLAN

43. Bankruptcy Code section 350(b) provides that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b); Fed. R. Bankr. P. 5010 ("A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code."). The Code does not define "other cause," and the decision to reopen a case is within the bankruptcy court's sound discretion.[14]

44. In considering whether "other cause" exists to reopen a bankruptcy case, courts

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[11] Ligado, for example, knew about and had the publicly-available 2001 report that Harbinger claims revealed the alleged fraud, as it was attached to a SkyTerra patent and prepared by a Ligado employee who retired in 2019. Ex. 16 (Compl. ¶¶ 182–83, 208–10).

[12] *D'Antignac*, 2013 WL 1084214, at *2 (party-in-interest standing includes "all persons whose pecuniary interests are directly affected by the bankruptcy proceedings").

[13] *See In re Evergreen Solar, Inc*., 2014 WL 300965, at *2 (Bankr. D. Del. 2014) (holding that defendant had standing to enforce confirmed plan's release provision, because "[a] defendant to a lawsuit has standing to argue that the claims raised against it have been released"); *see also In re Refco Inc.*, 505 F.3d 109, 117 (2d Cir. 2007) (holding that party with enforceable legal right is party-in-interest with standing in bankruptcy case).

[14] *In re Kim*, 566 B.R. 9, 12 (Bankr. S.D.N.Y. 2017); *In re Neil's Mazel, Inc.*, 492 B.R. 620, 628 (Bankr. E.D.N.Y. 2013) ("[T]he determination of whether 'other cause' exists to reopen the case is left to the discretion of the Court, based on the facts of each case.").

have examined factors such as (a) the length of time that the case was closed, (b) whether a non-bankruptcy forum has jurisdiction to determine the issue, (c) whether prior litigation in the bankruptcy court determined that a state court would be the appropriate forum, (d) whether any parties would suffer prejudice should the court grant or deny the motion to reopen, (e) the extent of the benefit to the movant by reopening, and (f) whether it is clear at the outset that no relief would be forthcoming to the movant by granting the motion to reopen.[15]

45. Reopening a bankruptcy case is particularly compelling where the court must exercise its ongoing jurisdiction to enforce its prior orders, especially confirmation orders. The Supreme Court, the Second Circuit, and bankruptcy courts in this District and elsewhere have all recognized that one of a bankruptcy court's core functions is to interpret and enforce its prior orders, including confirmation orders.[16]

46. The Court should briefly reopen the Chapter 11 Cases for the limited purpose of enforcing the Plan and Confirmation Order for two reasons: (a) the New Harbinger Litigation is contrary to the Assignment Provision and the Plan Release; and (b) the other relevant considerations weigh decidedly in favor of reopening the Chapter 11 Cases.

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[15] *See*, *e.g.*, *In re Atari*, *Inc*., 2016 WL 1618346, at *4–5 (Bankr. S.D.N.Y. 2016).

[16] *See Luan Inv. S.E. v. Franklin Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir. 2002) ("A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization."); *In re Charter Commc'ns*, 2010 WL 502764, at *4 (Bankr. S.D.N.Y. 2010) (bankruptcy court "unquestionably has the authority and discretion" to interpret and enforce its confirmation order)*; In re Geo Specialty Chemicals Ltd.*, 2017 WL 6027670, at *23 (Bankr. D.N.J. 2017) (holding that cause to reopen bankruptcy case would exist if court determines that plaintiff's prosecution of claim would violate plan's injunction); *see also Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 139 (2009) (finding that "Bankruptcy Court plainly had jurisdiction to interpret and enforce" a confirmation order it had entered twenty years earlier).

A. The New Harbinger Litigation Is Contrary to the Assignment Provision

47. Courts interpret confirmed plans under ordinary New York[17] contract law principles.[18] "The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent."[19] Here, the only rational and truthful interpretation of the Assignment Provision, based on its plain language, is that the Harbinger Plaintiffs assigned the New Harbinger Litigation to Ligado.

48. ***The New Harbinger Litigation falls within the scope of the Assignment Provision*:** The subject of the assignment is the "Harbinger Litigations," defined to include not just the FCC and the GPS Actions, but also "any and all of Harbinger's rights to commence any New Action." Ex. 4 (Plan, § I.A.106). "New Actions," in turn, include any "unasserted claims or Cause of Action arising out of, relating to, or in connection with, in any manner, the Chapter 11 Cases, the Debtors or the Debtors' businesses or any obligations or securities of, or interests in, the Debtors for things occurring through and including the date of termination of the Plan Support Agreement." Ex. 4 (Plan, § I.A.144). The "arising out of, relating to, or in connection with" phrase is considered "classically," "exceedingly," and "paradigmatically" broad.[20]

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[17] The Plan is governed by New York law. Plan, § I.D.

[18] *See In re WorldCom, Inc.*, 352 B.R. 369, 377 (Bankr. S.D.N.Y. 2006) (finding that interpreting provisions of confirmed chapter 11 plan is akin to contract interpretation); *In re Bennett Funding Group, Inc.*, 220 B.R. 743, 758 (Bankr. S.D.N.Y. 1997) (applying New York general contract principles to plan governed by New York law).

[19] *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 (2002).

[20] *Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123, 128-129 (2d Cir. 2001); *cf. Mehler v. Terminix Int'l Co.*, 205 F.3d 44, 49 (2d Cir.2000) (arbitration clause covering "any controversy or claim . . . arising out of or relating to" agreement is "classically broad"); *In re Residential Capital, LLC,* 563 B.R. 756, 769 (Bankr. S.D.N.Y. 2016) (finding "exceedingly broad" arbitration clause covering disputes "arising out of or relating to" insurance policy); *In re Hagerstown Fiber Ltd. P'ship*, 277 B.R. 181, 204–05 (Bankr. S.D.N.Y. 2002) (finding "paradigmatic[ally] broad" clause "that extends beyond disputes 'arising under' a contract to disputes 'relating to' or 'in connection with' the contract").

49. The claims alleged in the New Harbinger Litigation easily fall within this broad definition. They allege that Movants, by concealing various alleged defects in the Debtors' technology and business, induced the Harbinger Plaintiffs to invest (i) in the Debtors (by purchasing the Debtors' debt and equity securities), which damaged the Harbinger Plaintiffs because LightSquared was forced into bankruptcy; and (ii) in TVCC (the assets of which Harbinger contributed to LightSquared as part of its plan for LightSquared's business, Ex. 16 (Compl. ¶ 180)), which damaged the Harbinger Plaintiffs because they could not deploy LightSquared's spectrum alongside TVCC's. As in *Coregis*, where the Second Circuit held that the lawsuits at issue were "related to" the "Companies' financial failure by the very wording of the complaints, which explicitly refer to, discuss, and seek redress for that failure," 241 F.3d at 131, the Complaint here "explicitly refer[s] to" LightSquared's business, "discuss[es]" LightSquared's business, and "seeks redress for [the alleged] failure" of LightSquared's business. Its allegations therefore arise out of, relate to, and are in connection with "the Debtors or the Debtors' business." The Complaint also arises out of, relates to, and is in connection with (i) "securities of, or interests in, the Debtors," because the Harbinger Plaintiffs allege that Movants' misrepresentations induced them to invest in the Debtors' equity securities, Ex. 16 (Compl. ¶¶ 158–65); and (ii) the "Chapter 11 Cases," because the Harbinger Plaintiffs claim that Movants' alleged misrepresentations forced LightSquared into bankruptcy, (*Id*. ¶ 215). The Harbinger Plaintiffs' allegations therefore fall squarely within the subject of the Assignment Provision.

50. Before withdrawing the 2017 Harbinger Litigation, the Harbinger Plaintiffs argued that their claims do not fall within the broad "New Actions" definition because they relate to Apollo's equity interest in *SkyTerra*—not the Debtors or any obligation or interest of the Debtors. This argument fails for five reasons. *First*, SkyTerra and LightSquared are the same entity.

Publicly-available information shows that SkyTerra merely changed its name on July 20, 2010, to LightSquared. Ex. 19 (Delaware Name Change Certificate); *see also* Ex. 16 (Compl. FN1: conceding that LightSquared is SkyTerra's "successor in interest"). An action about SkyTerra necessarily "arises out of, relates to, or is in connection with, in any manner," LightSquared, ***the same entity***. *Second*, the "New Actions" definition includes not only "the Debtors," but also "the Debtors' businesses." LightSquared carried on SkyTerra's business, and thus an action about SkyTerra's business necessarily "arises out of, relates to, or is in connection with, in any manner," LightSquared's business. *Third*, because SkyTerra and LightSquared are the same entity, the Harbinger Plaintiffs' investments in SkyTerra's equity securities were in "securities of, or interests in, the Debtors." *Fourth*, the New Harbinger Litigation arises out of, relates to, or is in connection with "the Chapter 11 Cases," because the Harbinger Plaintiffs allege that Movants' conduct precipitated those cases. *Fifth*, the litigations that inspired the Assignment Provision—Harbinger's GPS and FCC Actions—alleged wrongdoing relating to the company under both names. *See generally* Exs. 12, 13. It would be both illogical and incorrect to interpret the Assignment Provision to apply only to claims involving "LightSquared" but not to claims involving "SkyTerra."

51. A key Harbinger admission in the 2020 Claims Understanding Agreements further indicates that the Assignment Provision covers the New Harbinger Litigation. Harbinger admits in that agreement that it does "not own . . . any claims or causes of action arising from, or relating to, Ligado (or its assets or operations), or the sale and/or purchase of the debt, equity and/or securities of SkyTerra," except for the claims against Movants. JR. Exs. 3, 4. The only way the Harbinger Plaintiffs would "not own" those claims is if they had assigned them away in the Plan. And their assertion that they somehow retained only their claims against Movants is nonsensical,

because the Plan does not carve out from the Assignment Provision any claims against Movants (or anyone), and the Harbinger Plaintiffs themselves assert that they did not discover those claims until well after the Plan was consummated. Ex. 16 (Compl. ¶¶ 208–10).

52. ***The Harbinger Plaintiffs are bound by the Assignment Provision***. In another weak attempt to head off this Court's assignment determination, the Harbinger Plaintiffs assert in the Complaint that the Harbinger Plaintiffs "were not parties to and never participated in" the LightSquared bankruptcy proceedings. Ex. 16 (Compl. ¶ 22). But there can be no serious question that each of the Harbinger Plaintiffs and their respective affiliates are among the assignors bound by the Assignment Provision. The six Harbinger Plaintiffs are all affiliates of Harbinger Capital Partners and, as evidenced by his signing the Claims Understanding Agreements on their behalf and his decisive involvement in the negotiations to stay their litigation, are under Falcone's control. *See supra* FN6, ¶¶ 24–26. Five of those six entities were also plaintiffs in the GPS and FCC Actions.[21] This is reflected in the following chart (the bolded Harbinger entities overlap among the three actions):

FCC Action Plaintiffs:	**Harbinger Capital Partners II LP** **Harbinger Capital Partners Master Fund I, LTD.** **Harbinger Capital Partners Special Situations Fund, L.P.** **Harbinger Capital Partners Special Situations GP, LLC** **Credit Distressed Blue Line Master Fund, LTD.** Global Opportunities Breakaway LTD**.** Harbinger Capital Partners LLC HGW GP, LTD HGW Holding Company, L.P. HGW US GP Corp. HGW US Holding Company, L.P. Harbinger Capital Partners SP, Inc. Blue Line DZM Corp.
GPS Action Plaintiffs:	**Harbinger Capital Partners II LP** **Harbinger Capital Partners Master Fund I, LTD.** **Harbinger Capital Partners Special Situations Fund, L.P.**

[21] The sixth—Harbinger Capital Partners Offshore Manager, L.L.C.—was identified in the Final SEC Consent Judgment as a "Harbinger Adviser" under Falcone's control. *See supra* ¶ 25.

	Harbinger Capital Partners Special Situations GP, LLC **Credit Distressed Blue Line Master Fund, LTD.** Global Opportunities Breakaway LTD. Harbinger Capital Partners LLC HGW GP, LTD HGW Holding Company, L.P. HGW US GP Corp. HGW US Holding Company, L.P.
New Harbinger Litigation Plaintiffs:	**Harbinger Capital Partners II LP** **Harbinger Capital Partners Master Fund I, LTD.** **Harbinger Capital Partners Special Situations Fund, L.P.** **Harbinger Capital Partners Special Situations GP, LLC** **Credit Distressed Blue Line Master Fund, LTD.** Harbinger Capital Partners Offshore Manager, L.L.C.

53. The Assignment Provision could not have assigned even the GPS and FCC Actions without including all plaintiffs in those actions—including the Harbinger Plaintiffs—among the assignors to which the provision applies. And because the Assignment Provision requires those Harbinger entities to assign to Ligado not only the GPS and FCC Actions, but ***also any*** New Actions, the Harbinger Plaintiffs were required to assign to Ligado their right to bring the New Harbinger Litigation.

54. This clear and common-sense result is also reflected in the Plan's reference to Harbinger. The Assignment Provision applies to "Harbinger," which the Plan defines to include those Harbinger affiliates that "hold Claims and/or Equity Interests." Ex. 4 (Plan, § I.A.105). The Harbinger Plaintiffs admitted in the GPS Action that they purchased securities in the Debtors and, thus, that ***each*** held "Equity Interests" in the Debtors. *See* Ex. 12 (GPS Compl. ¶ 134) ("[B]y 2009 Harbinger [including the Harbinger Plaintiffs] had become SkyTerra's single largest shareholder and creditor."); *id*. ¶ 230 ("Harbinger [including the Harbinger Plaintiffs] purchased and sold securities, including, but not limited to, when it purchased shares and debt instruments in SkyTerra."). This is consistent with the Plan's broad definition of Equity Interests to include "any. . . instrument evidencing an ownership interest in a Debtor." Ex. 4 (Plan, § I.A.77). So even if Falcone at some point had parked Harbinger's equity in the Debtors in different Harbinger entities,

the Harbinger Plaintiffs' interests would still fall within the scope of this provision.

55. Any such shell-game shift of ownership interests likewise could not overcome the Plan's successors-and-assigns provision that, as described above, *see supra* ¶ 19, imposes responsibility for Plan "obligations" on all "affiliates." It provides that, "[e]xcept as expressly set forth in the Plan, the . . . obligations of any Entity named or referred to in the Plan shall be binding on . . .any . . . affiliate. . . ." Ex. 4 (Plan, § XII.D). The term "obligations" is not defined in the Plan or the Bankruptcy Code, but has a dictionary definition of "1. a legal . . . duty to do or not to do something . . . . 2. A formal, binding agreement or acknowledgment of a liability to . . . do a certain thing for a particular person or set of persons; esp., a duty arising by contract. . . ." *Obligation*, BLACK'S LAW DICTIONARY (10th Ed. 2014). The Assignment Provision imposes a mandatory requirement on Harbinger and affiliates ("shall"), and thus qualifies as an "obligation."

56. And each of the Harbinger Plaintiffs is an "affiliate" of Harbinger Capital Partners by virtue of Harbinger Capital Partners' (and Falcone's) ownership and control of them. The Plan uses at various points the defined term "Affiliate" with a capital "A" and the undefined term "affiliate" with a lowercase "a." When the Plan's sophisticated drafters—including Harbinger—intended to use a defined term, they did so with an initial capital letter. Their decision to use the undefined term "affiliate" with a lower case "a" in Section XII.D of the Plan, shows that they intended the term "affiliate" in that provision to have its normal English meaning: "a business entity effectively controlling or controlled by another or associated with others under common ownership or control." *Affiliate*, MERRIAM-WEBSTER'S LAW DICTIONARY.[22]

[22] *See Nat'l Union Fire Ins. Co. of Pittsburg v. Beelman Truck Co.*, 203 F. Supp. 3d 312, 319 (S.D.N.Y. 2016) (applying Webster's Third New International Dictionary (2002) definition of "affiliate" as "a company effectively controlled by another or associated with others under common ownership or control."); *see also Horse-Shoe Capital v. Am. Tower Corp.*, 30 Misc.3d

57. As a result, the only plausible reading of the Assignment Provision is that it binds all Harbinger affiliates, including, by definition, all of the Harbinger Plaintiffs, regardless of how Harbinger and Falcone chose to structure their investments.[23]

58. To the extent the Court perceives any ambiguity in the text of the Assignment Provision, the extrinsic evidence confirms that the Harbinger Plaintiffs are bound.[24] As established above, the Assignment Provision was the focus of significant attention during the confirmation proceedings, during which time both the Debtors' and the Court recognized the benefit it provided the Debtors because Harbinger was contributing "multiple" litigations to Ligado and was generally agreeing to give up its right to "act in a noncooperative fashion." Ex. 2 (Confirmation Hearing Transcript at 62, 69); Ex. 10 (Reply Memorandum in Support of Plan Confirmation ¶¶ 10, 14, 28, 110, 117, 121, 128–30). The transcript of the confirmation hearing shows that the parties and the Court understood that the GPS and FCC Actions "are being contributed to the estate and the estate is controlling them." Ex. 2 (Confirmation Hearing Transcript at 62). Thus, the parties and the Court intended that the Assignment Provision would bind all of the plaintiffs in the GPS and FCC Actions—including the Harbinger Plaintiffs.

59. The Claims Understanding Agreements likewise support Movants' interpretation.

1220(A), at *2 (N.Y. Sup. 2011) (holding a contract negotiated by sophisticated parties defines terms when a definition is required and a dictionary can be used to interpret the ordinary meaning of terms that are not defined); *Int'l Fid. Ins. Co. v. Cty. of Rockland*, 98 F. Supp. 2d 400, 412 (S.D.N.Y. 2000) ("Sophisticated lawyers . . . must be presumed to know how to use parallel construction and identical wording to impart identical meaning when they intend to do so, and how to use different words and construction to establish distinctions in meaning.").

[23] *See Greenwich Capital Fin. Prods., Inc. v. Negrin*, 903 N.Y.S.2d 346, 348 (N.Y. App. Div. 2010) ("[A] contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties").

[24] *Ames v. Cty. of Monroe*, 80 N.Y.S.3d 774, 777 (N.Y. App. Div. 2018) ("[W]here contract language is reasonably susceptible of more than one interpretation, extrinsic or parol evidence may be then permitted to determine the parties' intent as to the meaning of that language.").

In those 2020 agreements, the Harbinger Plaintiffs concede that they "do not own" any litigation claims relating to Ligado except for the claims against Movants. But there is only one known circumstance in which the Harbinger Plaintiffs could have relinquished those claims: in the Plan. Thus, the Harbinger Plaintiffs concede that they were assignors under the Plan and assigned away all claims (except, they contend, the ones asserted against Movants). Moreover, Falcone signed the Claims Understanding Agreements on the Harbinger Plaintiffs' behalf, further confirming that they are under his control and therefore are "affiliates" bound by the Assignment Provision.

60. The Harbinger Plaintiffs should also be estopped from arguing that they pulled a fast one on the Court, and are not bound by the Assignment Provision. Judicial estoppel is "designed to prevent a party who plays fast and loose with the courts from gaining unfair advantage through the deliberate adoption of inconsistent positions in successive suits."[25] Courts generally consider whether (a) the party's current position is "clearly inconsistent with its earlier position;" (b) the party "succeeded in persuading a court to accept that party's earlier position"; and (c) "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."[26] Each element is satisfied here:

a. ***Harbinger's irreconcilable and inconsistent positions****:* During the confirmation proceedings, Harbinger Capital Partners, through the same counsel who represents the Harbinger Plaintiffs in the New Harbinger Litigation, entered an appearance at each hearing and sat silently as the Court consistently noted that the "Harbinger" lawsuits—most prominently, the GPS and FCC lawsuits—were being assigned to Ligado under the Plan. Ex. 2 (Confirmation Hearing Transcript at 62, 69); Ex. 11 (Mar. 18 Hearing Transcript at 152). At no point did Harbinger, Falcone, or their counsel speak up to distinguish between the different plaintiff entities in the FCC or GPS Actions or clarify that certain Harbinger plaintiffs *would not* assign their claims. The Harbinger Plaintiffs now, however, take the irreconcilable position that the Assignment Provision never bound them.

[25] *Wight v. BankAmerica Corp*, 219 F.3d 79, 89 (2d Cir. 2000); *accord Zedner v. United States*, 547 U.S. 489, 504 (2006); *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001).

[26] *New Hampshire v. Maine*, 532 U.S. at 750–51; *Zedner*, 547 U.S. at 504.

b. ***The Court relied on the description of the Assignment Provision in confirming the Plan****:* The Court confirmed the Plan with the understanding that the "Harbinger Litigations" would be assigned to Ligado. Had Harbinger disclosed that *five* Harbinger plaintiffs in the GPS and FCC Actions would not be bound by the Assignment Provision, the confirmation process certainly would have been handled differently.[27] Indeed, this Court was led to believe just the opposite—that Harbinger was contributing "multiple" litigations and potential New Actions to Ligado and surrendering its right to "act in a noncooperative fashion." Ex. 2 (Confirmation Hearing Transcript at 62, 69).

c. ***Harbinger derived an unfair advantage****:* Harbinger and its various affiliates—and most importantly Falcone, through his control of Harbinger—reaped substantial benefits under the confirmed Plan, including obtaining broad releases and approximately 45% of Ligado's equity. *See supra* ¶¶ 18, 21-23. And it recently used that significant stake in Ligado to obtain a benefit entirely unrelated to its economic rights as an equity holder: the Claims Understanding Agreements, which it is using to try to overturn the assignment.

61. The Harbinger Plaintiffs should therefore be judicially estopped from taking a contrary position now, after receiving the benefits of their bargained-for-exchange.

62. ***Harbinger's "leverage" during Ligado's 2020 restructuring cannot extend to rewriting the Court's Confirmation Order through the Claims Understanding Agreement***. The Claims Understanding Agreement cannot retroactively undo Harbinger's assignment of its claims or rewrite the Assignment Provision's unambiguous terms. The Court knows from its involvement in the LightSquared bankruptcy precisely what the parties intended in the Assignment Provision. It should not give any weight to a separate counter-factual Plan rewriting agreement that Harbinger opportunistically extracted under duress *five years after the Plan was confirmed*.[28]

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[27] *See In re Adelphia Recovery Tr.*, 634 F.3d 678, 697–98 (2d Cir. 2011) (applying judicial estoppel to a party that remained silent with knowledge that a bankruptcy court had a mistaken understanding and benefited from the bankruptcy court's resulting order).

[28] Movants are also seeking targeted discovery from Falcone, Harbinger, Ligado (and its counsel), Centerbridge, and Fortress regarding the 2020 negotiations leading to the Claims Understanding Agreements, to aid the Court in understanding why Ligado is opposing this Motion, as it is contractually obligated to do. Movants are not at this time seeking discovery regarding the Plan negotiations, because no discovery or extrinsic evidence is necessary for the Court to interpret the unambiguous Plan provisions at issue. If the Court were to find the Plan ambiguous, however, Movants would seek limited discovery regarding the negotiation of the relevant Plan provisions.

B. The New Harbinger Litigation Violates the Plan Release

63. The non-fraud claims asserted against the Released Movants in the New Harbinger Litigation also violate the Plan Release. Each Releasing Party granted an unconditional and irrevocable release of each Released Party of any claims "whether known or unknown, foreseen or unforeseen" related to the Debtors or any purchase of the Debtors' debt or equity other than claims "arising out of or relating to any act or omission . . . that constitutes willful misconduct (including, but not limited to, fraud) or gross negligence." Ex. 4 (Plan, § VIII.F). The Plan Release expressly covers any and all claims based in tort, equity or contract. Ex. 3 (Confirmation Order, ¶ 35); Ex. 4 (Plan, § VIII.F).

64. As discussed above, the Released Movants (15 of the 16 Movants) are Released Parties because, according to the Complaint, each is a former shareholder, affiliate, director, officer, or consultant of the Debtors. *See supra* ¶ 22. The Harbinger Plaintiffs are all entities affiliated with Harbinger. *See supra* ¶¶ 24-25. Thus, the Harbinger Plaintiffs are all Releasing Parties under the Plan.

65. The subject matter of the New Harbinger Litigation also falls squarely within the scope of the Plan Release for two reasons.

66. *First*, each of the Harbinger Plaintiffs agreed to release the Released Movants from all claims and Causes of Action "based on or relating to, or in any manner arising from, in whole or in part, the Debtors." Here, the crux of the Complaint is that Movants knew that the Debtors' business was faulty and misrepresented that the business was profitable. *See supra* ¶ 33. There is thus no question that the New Harbinger Litigation "relates to" the Debtors and their business.

67. *Second*, the Harbinger Plaintiffs also released the Released Movants from all claims relating to "the prepetition or postpetition purchase, sale, or rescission of the purchase or sale of any debt or Security of the Debtors." The Harbinger Plaintiffs allege in six claims that they

invested in the Debtors' debt and equity on the basis of Apollo's, the Directors', and the Executives' alleged misrepresentations and tortious misconduct (excluding the three TVCC-related claims, which do not relate to the Debtors' debt or securities, and the civil conspiracy claim, which is not recognized under New York law, *see supra* n. 3). Five of those six claims are non-fraud claims that thus fall squarely within the Plan Release.

III. THE OTHER RELEVANT FACTORS WEIGH IN FAVOR OF REOPENING THE BANKRUPTCY CASE FOR A LIMITED PURPOSE

68. Enforcing the Confirmation Order is reason enough to reopen the Chapter 11 Cases for the narrowly-tailored relief Movants seek. *See supra* n.14. But the other relevant factors also weigh in favor of reopening the case to enforce the Plan and Confirmation Order:

69. ***Movants would benefit from resolving ownership of assigned claims and the scope of release***: Reopening a case is warranted when a party stands to benefit from the underlying relief requested.[29] The "need to enforce rights that were bargained for in a confirmed plan of reorganization constitutes a sufficient 'benefit' to justify reopening a bankruptcy case."[30] Here, Movants would benefit from reopening the case to clarify the scope of the Assignment Provision and Plan Release. The Assignment Provision benefits Movants because it ensures that only Ligado can bring a new claim relating to the Debtors' business against them. Importantly, the Court's well-informed determination would give the state court and parties clarity as to who owned Harbinger's litigation claims from 2015 through 2020, thereby shedding light on the threshold statute of limitations question that the state court will need to adjudicate. *See supra* ¶ 41. And the broad Plan Release was designed to ensure that the Debtors' current and former shareholders,

[29] *See In re Atari, Inc.*, 2016 WL 1618346, at *11 (Bankr. S.D.N.Y. 2016) (reopening a bankruptcy case to enforce a release embodied in a confirmed chapter 11 plan that benefited parties other than the reorganized debtors).

[30] *Id.*

affiliates, officers, directors, and consultants would not be embroiled in any litigation asserting non-fraud claims relating to prepetition investments in the Debtors or the Debtors' businesses. *See* Ex. 3 (Confirmation Order, ¶ 35); Ex. 4 (Plan, § VIII.F). Enforcing the Plan Release would be consistent with that intent, and benefit Movants by allowing the state court to dispose of most of the claims in the New Harbinger Litigation.

70. In addition, reopening the bankruptcy case for the limited purpose of clarifying and enforcing the Plan and Confirmation Order would conserve judicial resources because this Court is intimately familiar with the Plan and the months of mediations and negotiations leading up to the inclusion of the Assignment Provision and Plan Release in the Plan and Confirmation Order.[31] The state court, in contrast, is a relative stranger to this case and is not familiar with the Plan, Confirmation Order, or the confirmation proceedings. There is thus a benefit to all parties to having this Court decide these threshold issues in an efficient and expeditious manner.

71. ***The Motion is timely***: Bankruptcy Rule 5010 does not prescribe a deadline to bring a motion to reopen.[32] A bankruptcy court will only deny such a motion on timeliness grounds where the movant unreasonably delays or another party is prejudiced.[33] Neither applies here.

72. *First*, Movants acted promptly. They first filed this Motion within several weeks of Harbinger ambushing them with a Christmas Eve 2017 lawsuit. Movants have since agreed to Ligado's repeated requests over a nearly three-year period—each time with Harbinger's

[31] *See Atari*, 2016 WL 1618346, at *9 (reopening bankruptcy case because the bankruptcy court "was the appropriate forum" to interpret the plan due to its familiarity with and connection to plan's confirmation).

[32] *See In re Arana*, 456 B.R. 161, 174 (Bankr. E.D.N.Y. 2011) ("Neither Section 350(b) nor Rule 5010 limits the time to make a motion to reopen.").

[33] *Id.*; *see also In re McCoy*, 560 B.R. 684 (6th Cir. B.A.P. 2016) (bankruptcy court abused discretion in denying motion to reopen filed nearly four years after case was closed based solely on passage of time and where no prejudice to other creditors was found).

begrudging consent—to defer this litigation to accommodate Ligado's regulatory and restructuring efforts. Ex. 15 (Second Tolling Agreement, at 2–5). And Movants now refiled this Motion within ten days of the state court stay expiring on November 15, 2020, as agreed in the court-approved stay agreement between the Harbinger Plaintiffs and Movants. Ex. 17 (Aug. 10, 2020 Stipulation). Movants should not be penalized for accommodating Ligado's requests to hold this Motion in abeyance, which derivatively benefitted Harbinger as an approximately 45% equity holder of Ligado. In fact, Harbinger agreed in the parties' various tolling and stay agreements not to argue that this "passage of time" is in any way relevant to the Motion. *Id*. at 6; Ex. 15 (Second Tolling Agreement, at 5).

73. *Second*, reopening the case in the limited manner Movants propose would not prejudice Ligado or Harbinger. The limited relief Movants seek can be granted on an expedited timetable, after which the Chapter 11 Cases can once again be promptly closed. While Ligado is expected to file an opposition to this Motion—as it contractually bound itself to do under the threat of Harbinger blowing up its restructuring—it will have no legitimate substantive basis for doing so. In fact, its counsel specifically told Movants' counsel over the summer that once it completed its restructuring, it would have no reason to be concerned about a reopened bankruptcy. Rosenberg Decl. ¶ 30. Nor can Harbinger be heard to complain about having to litigate the scope of the Plan in this Court, where it was an active participant in the bankruptcy and a co-proponent of the Plan. Indeed, the Court should see right through Harbinger's opposition. Its desperate maneuverings during Ligado's restructuring to force rote opposition to this Court's informed and efficient resolution of the key Plan issues speaks volumes.

IV. AN ORDER IS WARRANTED TO ENSURE THAT THE HARBINGER PLAINTIFFS COMPLY WITH THE PLAN AND CONFIRMATION ORDER AND TO ENJOIN THEM FROM FURTHER VIOLATIONS

74. The Court should issue a declaration confirming that the Harbinger Plaintiffs (and

any affiliates) assigned all of their litigation claims against the Movants and released their non-fraud claims in the Plan and Confirmation Order, and enjoin them from their current violations, and any future violations, of the Plan and Confirmation Order. Such action is within the Court's powers under Bankruptcy Code section 105(a) to enjoin a party from taking actions that violate prior court orders.[34] This Court has a vested interest in enforcing and protecting its own orders.[35]

75. The Harbinger Plaintiffs' disregard for the terms of the Plan and Confirmation Order further warrants the requested order from this Court. Harbinger, as a Plan Proponent, benefitted from the Plan in exchange for the transfer, assignment, and contribution of the New Harbinger Litigation to Ligado. It would violate public policy to allow any of the Harbinger Plaintiffs or their respective affiliates to pursue claims in the New Harbinger Litigation in direct violation of the deal they struck and that this Court approved in the Plan and Confirmation Order.

RESERVATION OF RIGHTS

76. Where a party violates a bankruptcy court's order, the Court has inherent authority and authority under Bankruptcy Code section 105(a) to impose sanctions, including holding the party in contempt and awarding attorneys' fees.[36] Each of the Movants expressly reserves the right

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[34] *See In re Res. Cap., LLC*, 508 B.R. 838, 849–50 (Bankr. S.D.N.Y. 2014) (finding that the bankruptcy court had post-confirmation jurisdiction to enjoin a party from bringing claims that violated plan's release and injunction provisions); *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("Section 105(a) should be 'construed liberally to enjoin [actions] that might impede the reorganization process.'") (citations omitted).

[35] *See*, *e.g.*, *In re Texaco Inc.*, 182 B.R. 937, 944 (Bankr. S.D.N.Y. 1995) (noting that "sound considerations of public policy compel the conclusion" that bankruptcy courts have authority to enforce their own orders); *In re Speigel, Inc.*, 2006 WL 2577825 at *7 (Bankr. S.D.N.Y. 2006) (bankruptcy court has the power post-confirmation to "protect its confirmation decree, to prevent interference with the execution of a confirmed plan, and to otherwise aid in its operation."); *Ernst & Young, LLP v. Reilly (In re Earned Capital Corp.)*, 393 B.R. 362, 371 (Bankr. W.D. Pa. 2008) (permanently enjoining the prosecution of a state court action that "amount[ed] to a collateral attack on the [plan's] Order of Confirmation").

[36] *See In re Res. Cap., LLC*, 512 B.R. 179, 190–91 (Bankr. S.D.N.Y. 2014).

to supplement the request for relief and to seek damages for the Harbinger Plaintiffs' violations of the Plan and Confirmation Order, including Movants' costs, fees, and expenses in connection with this Motion, and in defending and responding to the New Harbinger Litigation.

NOTICE

77. Notice of this Motion and the Proposed Order have been provided to (a) counsel for the Reorganized Debtors, (b) the Harbinger Plaintiffs and their counsel, (c) counsel for the Plan Proponents, and (d) the Office of the United States Trustee for the Southern District of New York. Movants submit that such notice constitutes good and sufficient notice of this Motion and that no other or further notice need be given.

NO PRIOR REQUEST

78. No prior request for the relief sought herein has been made to this Court or any other court, except that Apollo and the Directors first made a similar motion on February 14, 2018, but withdrew it without prejudice at Ligado's request at the same time that the Harbinger Plaintiffs voluntarily discontinued the 2017 Harbinger Litigation.

CONCLUSION

79. The New Harbinger Litigation brazenly defies this Court's Confirmation Order and breaches Harbinger's obligations under the Plan. The Court should briefly reopen the Chapter 11 Cases to issue a declaration that the Harbinger Plaintiffs assigned all of their claims and released their non-fraud claims against Movants, enjoin the Harbinger Plaintiffs from their current violations, and any future violations, of the Plan and Confirmation Order, and grant any other just and proper relief.

Dated: November 23, 2020
New York, New York

/s/ Jonathan Rosenberg

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