IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 17-12560 (KJC) (Jointly Administered) **Re: Dkt. Nos. 890, 1585**

DEBTORS' OBJECTION TO MOTION TO QUASH OF CONTRARIAN FUNDS, LLC

Woodbridge Group of Companies, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") hereby object (this "Objection") to the *Motion to Quash of Contrarian Funds, LLC* [Docket No. 1585] (the "Motion to Quash"), filed by Contrarian Funds, LLC ("Contrarian"), which seeks to bar all discovery in connection with the *Motion of Contrarian Funds, LLC for Authority to Acquire Promissory Notes Against the Debtors* [Docket No. 890] (the "Note Motion"). As set out below, Contrarian's arguments for precluding discovery in connection with the Note Motion lack merit, and the Motion to Quash should be denied.

PRELIMINARY STATEMENT

1. In its Note Motion, Contrarian seeks sweeping injunctive and declaratory relief – the very relief for which a full adversary proceeding is required under Rule 7001(7) and (9) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Specifically, Contrarian asks the Court to enjoin the Debtors from enforcing anti-assignment provisions in approximately

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the Debtors' noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting the undersigned counsel for the Debtors.

9,000 prepetition Notes by categorically declaring that "[e]ach and any Noteholder shall be and hereby is authorized to freely assign or otherwise transfer its right, title and interest in the Notes and attendant claims against the Debtors free of any restrictions or requirements set forth in the Notes and any related agreement or document …." Note Mot. Ex. A (Proposed Order) ¶ 2.

2. Bankruptcy Rule 7001 is no mere procedural nicety. It exists to ensure that requests for certain types of relief – including the injunctive and declaratory relief requested by Contrarian – are initiated, heard, and determined with appropriate procedural protections commensurate to the issues at stake. Such protections are vital where, as here, the sweeping and unprecedented relief at issue portends profound effects on the Debtors and these Chapter 11 Cases, and may even implicate potential violations of federal or state law. The federal Securities and Exchange Commission (the "SEC") has alleged that the very Notes at issue in Contrarian's Note Motion are unregistered securities that were unlawfully offered and sold in violation of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") prepetition. *See generally Complaint for Injunctive and Other Relief, SEC v. Shapiro, et al.*, No. 1:17-cv-24624 (S.D. Fla., filed Dec. 20, 2017) (the "SEC Complaint"). Yet Contrarian proposes that these same instruments be declared "freely assignable and transferable" (Note Mot. ¶ 18) by *ipse dixit* – without any input of the SEC or any of the state regulators who have made allegations similar to those set out in the SEC Complaint, a shred of discovery, or even one on-point precedent from any court anywhere granting this type of relief.[2]

[2] An adversary proceeding would, among other things, provide appropriate mechanisms for formal joinder or intervention of interested regulators or others, *see* Fed. R. Bankr. P. 7019 & 7024, full discovery, *see* Fed. R. Bankr. P. 7026–7037, robust briefing and argument that engages with the facts uncovered in discovery, *see* Fed. R. Bankr. P. 7056, and other well-settled standards and procedures. As the Debtors will argue in their forthcoming opposition to the Note Motion, Contrarian cannot sidestep the proper procedural rules, and its Note Motion can and should be denied on the basis that Contrarian has not complied with Bankruptcy Rule 7001. The Debtors will further demonstrate that the Note Motion is procedurally infirm for a second reason: lack of standing. Contrarian's putative standing rests on its assertion that it "has acquired certain Notes" and has filed "one proof of claim against

(footnote continued)

3. The Motion to Quash marshals two basic arguments in opposition to discovery: First, that the information the Debtors seek is confidential (albeit neither legally privileged nor otherwise protected from disclosure), and second, that Contrarian's legal arguments on the merits of the Note Motion are so strong that no facts the Debtors adduce in discovery could possibly have any bearing on the proper disposition of the Note Motion. Neither point is well-taken.

4. As to confidentiality, Contrarian maintains that the details of its attempts to acquire Notes in violation of the anti-assignment provisions is "sensitive, confidential commercial information that any investor would be reluctant to divulge." Mot. to Quash ¶ 2. Perhaps. But no claim is made that any of the information sought is legally privileged or otherwise protected from disclosure. Nor does Contrarian argue that there would be any particular burden (let alone an undue burden) in providing the requested discovery (which is modest and narrowly-tailored). The Debtors have offered to enter into an appropriate protective order to shield proprietary or competitively-sensitive information from Contrarian's competitors both at the production/deposition stage and in any filings in which such material may be referenced. This Court, its staff, and the attorneys who practice before it are all well-accustomed to dealing with sensitive information, and there is no reason to believe that the established practices and procedures employed to address these types of concerns in countless other cases before this Court will be inadequate here. *See infra* ¶¶ 23–25.

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the Debtors" on account of such allegedly acquired Notes. Mot. to Quash ¶ 13 (citing Claim No. 1216 (the "Contrarian Proof of Claim")). But – as the *Notice of Debtors' (I) Objection to Proof of Claim No. 1216 Asserted by Putative Transferee Contrarian Funds, LLC Without Prejudice to Right of Putative Transferors Elissa and Joseph Berlinger to Assert Such Claim; and (II) Request for a Limited Waiver of Local Rule 3007-1(f)(iii), to the Extent Such Rule May Apply* [Docket No. 1563] (the "Claim Objection") demonstrates – Contrarian's purported acquisition of the Notes is null, void, and of no effect, and Contrarian is nothing more than a potential purchaser of Notes. These issues will be briefed and argued in the context of Contrarian's Note Motion, but the Debtors flag them now to foreclose any future argument by Contrarian that the Debtors have somehow acquiesced in Contrarian's standing or procedural missteps or that it would be unfair to require Contrarian (or a proper plaintiff with actual standing) to start afresh with an adversary complaint following the June 5, 2018 hearing on the Note Motion. Contrarian can and should withdraw its Note Motion now rather than proceed down the dead-end path of a motion that ought to be an adversary proceeding and a movant that ought to be a plaintiff with proper standing.

5. Next, the Motion to Quash identifies three legal arguments that, by Contrarian's telling, are so compelling as to render any factual discovery irrelevant. Specifically, Contrarian argues that Bankruptcy Rule 3001 "[i]mplement[s] a broad policy in favor of the free transfer of claims" such that "only the transferor – and not the Debtor – may object to the transfer of a claim," Mot. to Quash ¶ 2; that "Section 9-408 of the UCC renders ineffective a contractual provision that requires the consent of a maker of a promissory note before the note may be transferred," *id*. ¶ 24; and that "the Debtors cannot be heard to enforce a non-assignment provision under Notes that they have materially breached through non-payment," *id*. ¶ 26. Each of these three arguments fails:

- Rule 3001 does not – indeed, ***cannot***, under the Rules Enabling Act, 28 U.S.C. § 2075 – override the anti-assignment provisions in the Debtors' Notes. The pertinent authority is not Bankruptcy Rule 3001 (which deals solely with the mechanics of transfers), but is instead Bankruptcy Code section 502(b)(1), which provides for the disallowance of any claim that is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Notes that have purportedly been acquired in violation of their anti-assignment provision are unenforceable in the hands of the putative transferee. Rule 3001 does not factor into the analysis. *See infra* ¶¶ 27–30.
- Contrarian's Uniform Commercial Code ("UCC") argument rests on the wrong section of the UCC. The section that Contrarian cites (9-408) applies only to ***security interests*** in notes, not to ***sales*** of notes. The applicable section is 9-406(e), which makes clear that anti-assignment provisions in promissory notes

may indeed be enforced to prohibit sales of notes. *See, e.g.*, *Day v. White*, 2017 U.S. Dist. LEXIS 90135, at *18–23, 2017 WL 2563234, at *7–9 (D.V.I. June 12, 2017). *See infra* ¶¶ 31–37.

- One party's breach – even a material breach – does not render a contract's anti-assignment provision unenforceable. *See, e.g.*, *In re Diamondhead Casino Corp.*, 2016 Bankr. LEXIS 2450, at *45–46, 2016 WL 3284674, at *15 (Bankr. D. Del. June 7, 2016). If it did, no debtor could ever enforce any provision in an executory contract or unexpired lease if the debtor had defaulted prepetition. That is not the law. *See infra* ¶¶ 38–42.

6. Even beyond the lack of merit in the legal arguments identified in Contrarian's Motion to Quash, several additional factors independently establish the relevance of the discovery at issue in the Motion to Quash:

7. ***First***, the Note Motion explicitly invokes "equity" and "public policy" in support of the relief sought, *see* Note Mot. ¶ 17, and therefore invites scrutiny of Contrarian's motives, conduct, and good faith. *See, e.g.*, *In re Mission of Care, Inc.*, 164 B.R. 877, 880 (Bankr. D. Del. 1994) ("He who seeks equity must do equity. Equity will not grant affirmative relief to one with unclean hands, where the misconduct directly relates to the legal controversy."). Especially in light of indications already apparent even before discovery,[3] it is manifestly appropriate for the Debtors to make targeted inquiries that are reasonably calculated to lead to the discovery of misrepresentations, sharp practices, or unfair dealing by Contrarian. *See infra* ¶¶ 44–45.

[3] *See* Ex. A to *Debtors': (I) Response to Motion to Shorten Notice With Respect to Motion to Quash of Contrarian Funds, LLC; and (II) Cross-Motion for Continuance of Hearing on [Note Motion]* [Docket No. 1593] (the "Scheduling Response & Cross-Motion") (an "offer of 82 cents per dollar" for Notes contingent on the Debtors acquiescing in an argument they have disputed from the first day of these Chapter 11 Cases).

8. ***Second***, as much as Contrarian seeks to portray the issue as whether there is free trading of bankruptcy claims generally, the fact remains that the nearly 9,000 instruments at issue here are Notes that each contain a presumptively valid term (the anti-assignment provision) that has not to date been voided by any order of this Court. Contrarian's Note Motion asks the Court to take the drastic and unprecedented step of altering these nearly 9,000 Notes. It is not too much to ask that the Debtors (who are, unlike Contrarian, actually party to the Notes) be allowed to take discovery prior to the hearing and determination of the Note Motion. Among other things, the Ponzi-scheme-specific issues in these Chapter 11 Cases raise important questions about how prepetition "interest" (which was not, in fact, interest – it was another victim's money) will be taken into account in connection with distributions to Noteholders. As detailed below, the Debtors have reason to believe that Noteholders are being induced to make representations regarding the ultimate amount of their allowed claims that may in fact be false. *See infra* ¶¶ 46–48.

9. ***Finally***, the specific Notes that Contrarian seeks to buy, sell, and otherwise freely trade and transfer have been alleged by the SEC to be unregistered securities that were unlawfully offered and sold in violation of the Securities Act and the Exchange Act. The purchase or sale of securities without a registration statement or applicable exemption risks Securities Act liability, and any material misrepresentation, omission, or deception in connection with the purchase or sale of securities risks Exchange Act liability. In addition to further distinguishing these Chapter 11 Cases from the vast majority of chapter 11 cases in which all types of claims are actively traded, these circumstances support discovery of what exactly Noteholders are being asked to represent as part of any sale of their Notes and what if any representations are being made to Noteholders to induce them to sell. *See infra* ¶¶ 49–50.

10. For all these reasons, and as more particularly set out below, discovery is necessary and appropriate here and the Motion to Quash should accordingly be denied.

FACTUAL BACKGROUND

A. The Chapter 11 Cases

11. On December 4, 2017, a total of 279 Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. Thereafter, on February 9, 2018, March 9, 2018, March 23, 2018, and March 27, 2018, additional affiliated Debtors (27 in total) commenced voluntary cases under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

12. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. As of the date hereof, no trustee has been appointed. An official committee of unsecured creditors (the "Unsecured Creditors' Committee") was appointed on December 14, 2017 [Docket No. 79].

13. On December 20, 2017, the SEC commenced an action styled *SEC v. Robert H. Shapiro, Woodbridge Group of Companies, LLC, et al.*, Case No. 17-24624, via the SEC Complaint, in the U.S. District Court for the Southern District of Florida. The Debtors have filed a motion seeking this Court's approval to resolve the SEC Complaint by agreeing to a permanent injunction barring them from violating the Securities Act and Exchange Act. *See Debtors' Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Debtors' Entry into a Consent and Judgment with the Securities and Exchange Commission* [Docket No. 1615].

14. On January 23, 2018, the Court approved a settlement providing for the formation of an ad hoc noteholder group (the "Ad Hoc Noteholders' Committee") and an ad hoc unitholder group (the "Ad Hoc Unit Holders' Committee" and together with the Unsecured Creditors' Committee and the Ad Hoc Noteholders' Committee, the "Constituencies") [Docket No. 357]. In addition, the settlement provided that the Debtors would replace their Board of Managers with three new members (the "New Board"). The New Board subsequently selected a new Chief Executive Officer and Chief Restructuring Officer.

15. In March 2018, the Debtors' counsel hosted representatives of and counsel for the Constituencies at its offices in Los Angeles for multiple full-day meetings. At these meetings, the parties engaged in extensive debate and discussion regarding key legal issues in the Chapter 11 Cases, including, among other things, whether the Notes are secured by valid, perfected security interests, the relative rights and treatment of holders of Notes and Units, and whether substantive consolidation of the Estates is warranted under the circumstances. The negotiations were ultimately fruitful, as they culminated with the signing of a *Summary Plan Term Sheet*, dated as of March 22, 2018 [Docket No. 828] (the "Plan Term Sheet").

16. The Plan Term Sheet memorializes a broad agreement in principle regarding the fundamental terms of a chapter 11 plan, while providing a basis for further discussion regarding the specific details of the plan and related transactions (which details remain subject to further review and approval). "The Plan will admit and acknowledge that the Debtors were operating a Ponzi scheme since at least August 2012 and that the date of discovery of such scheme was in December 2017." Plan Term Sheet § C(2)(c). Thus, the consideration that will ultimately be distributed in respect of any Note will take into account the prepetition "interest" received by the Noteholder. *See* Plan Term Sheet Ex. A (definition of "Note Distribution Formula"). This is a

consequence of how Ponzi schemes operate: One victim's "interest" is actually money that was procured by fraud from another, later-in-time victim. This fact is important, because the Debtors are aware that certain claims buyers are inducing Noteholders to make representations about their ultimate recovery entitlement that are untrue.

B. Contrarian's Note Motion

17. Each of the nearly 9,000 prepetition Notes issued by the Debtors contain anti-assignment provisions that are clear and conspicuous:

> 14. **No Assignment.** Neither this Note, the Loan Agreement of even date herewith between Borrower and Lender, nor all other instruments executed or to be executed in connection therewith (collectively, the "Collateral Assignment Documents") are assignable by Lender without the Borrower's written consent and any such attempted assignment without such consent shall be null and void.

18. Each Note also contains a choice-of-law provision specifying that Delaware law governs. Under Delaware law, the anti-assignment provisions in the Notes are valid and enforceable, *see, e.g.*, *Se. Chester Cnty. Refuse Auth. v. BFI Waste Servs. of Pa., LLC*, 2017 Del. Super. LEXIS 312, at *13 (Del. Sup. Ct. June 27, 2017); *Paul v. Chromalytics Corp.*, 343 A.2d 622, 625–26 (Del. Super. Ct. 1975), which means that the Debtors' express written consent is required before any Note may be transferred or assigned and that any purported transfer or assignment without such express written consent is null and void. Although Contrarian's Note Motion seeks to invalidate the anti-assignment provisions in the Notes, to date the provisions remain operative and in effect.

19. In the exercise of their business judgment, and in close consultation with the Constituencies, the Debtors provided notice on March 21, 2018 that "that they will impose a temporary moratorium on consideration of consent to any Transfer of Units or Notes for the next ninety (90) days" in order to, *inter alia*, avoid distractions and focus on exiting the chapter 11 process. *See Notice Regarding Transfers of Units or Notes* [Docket No. 799] (the "Transfer

Notice"). The Transfer Notice did not purport to create rights that the Debtors do not already have under the Notes themselves. Instead, the Transfer Notice put the marketplace on notice that the Debtors had determined not to consider or approve any Note transfers at this time. That way, if any claim buyer induced a Noteholder to make a false representation that the Noteholder had the unilateral power to convey good title to a Note, the claim buyer could not later claim reasonable reliance on such a representation.

20. On April 3, 2018, Contrarian filed the Note Motion. In it, Contrarian seeks what is in essence an injunction barring the Debtors from enforcing the anti-assignment provisions in the Notes. As grounds for such extraordinary relief, Contrarian makes several assertions of fact, including that Noteholders are being affirmatively harmed, *see* Note Mot. ¶ 2 ("Preventing liquidity perversely causes further harm to the same defrauded creditors the Debtors claim to want to protect."), *id*. ¶ 10 ("Restricting the transfer of the Notes only makes matters worse for [the Noteholders]."), and that the Debtors are acting unfairly vis-à-vis their creditors, *see id*. ¶ 11 ("The Debtors have not considered each Noteholder's liquidity needs or risk tolerance, and for the Debtors to impose their views on a global class of creditors is highly restrictive and patently unfair to the creditors that do want to sell their Notes."). Further, the Note Motion explicitly appeals to public policy and equitable considerations as grounds for voiding the anti-assignment provisions, *see id*. ¶ 17, thus bringing into play considerations of unclean hands.

21. On April 4, 2018 (the day after the Note Motion was filed), the Debtors sent a letter to Contrarian's counsel seeking informal discovery with respect to the Note Motion, with a response requested by April 10, 2018. *See* Scheduling Response & Cross-Mot. Ex. B. The same day that Contrarian declined to provide such discovery, *see* Scheduling Response & Cross-Mot. Ex. C, the Debtors served a deposition notice (the "Deposition Notice," attached as Exhibit A to

Contrarian's Motion to Quash), followed the next day by the document requests that mirrored the informal discovery requests (the "Requests for Production," attached as Exhibit D to the Scheduling Response & Cross-Motion).

22. On April 18, 2018, Contrarian filed its Motion to Quash, which seeks an order quashing the Deposition Notice. With regard to the Requests for Production, the Motion to Quash observes that "Contrarian will serve a response and objections … in accordance with the Bankruptcy Rules," Mot. to Quash ¶ 15 n.3, which presumably means on May 10, 2018 (*i.e.*, 30 days after the requests were served).

ARGUMENT

A. Contrarian's Confidentiality Concerns Can Be Addressed by Entry of an Appropriate Protective Order; They Are Not a Basis to Quash Discovery

23. Most motions to quash or for protective orders argue that the discovery being resisted is either privileged or protected from disclosure or would impose "undue burden or expense." Fed. R. Civ. P. 26(c)(1). Not so with Contrarian's Motion to Quash. Instead, Contrarian asserts only that the Debtors seek "sensitive, confidential commercial information that any investor would be reluctant to divulge." Mot. to Quash ¶ 2. This same formulation appears three more times in the Motion to Quash, *see also id.* ("highly sensitive and confidential"); *id.* ¶ 3 ("sensitive and confidential commercial information"); *id.* ¶ 28 ("sensitive, confidential details of Contrarian's transactions or communications"), yet never is paired with an argument that the discovery sought is legally privileged or otherwise protected from disclosure, or that there would be any undue burden or expense in providing the discovery.

24. Contrarian's concerns about confidentiality can be addressed with an appropriate protective order to shield proprietary or competitively-sensitive information from Contrarian's competitors, both at the production/deposition stage and in any filings in which such material

may be referenced. Such orders are common in this Court and other courts across the country, and the Debtors are ready, willing, and able to agree to the entry of an appropriate protective order here. Indeed, the Debtors recently negotiated such an order with Comerica Bank to govern the production of sensitive financial information that may be subject to statutory and regulatory confidentiality regimes that are likely at least as stringent (if not more stringent) than any requirements that might be implicated by the Debtors' Deposition Notice and Requests for Production to Contrarian. *See Order Regarding Stipulation and Protective Order Regarding Confidentiality* [Docket No. 1609] (the "Stipulated Protective Order").

25. Finally in this regard, Contrarian is presumably making offers to large numbers of Noteholders. With nearly 9,000 Notes outstanding, it is not surprising that examples of such solicitations have been making the rounds. In addition to the exemplar included as Exhibit A to the Scheduling Response & Cross-Motion (Contrarian's supposed 82-cent "offer"), an example from another claims trader is discussed below. *See infra* ¶ 47 & Ex. A hereto. Commercial solicitations and communications in wide circulation are not so sensitive or secret as to be beyond the reach of ordinary discovery.

B. Contrarian's Three Merits Arguments Do Not Foreclose Discovery

26. The primary thrust of the Motion to Quash is Contrarian's argument that the discovery sought by the Debtors does not "bear on … the Note Motion." Mot. to Quash ¶ 19. That is, by Contrarian's telling, three of its arguments in support of the Note Motion are pure issues of law, and no facts adduced in discovery will have any bearing them. But this attempt to resist discovery of the facts fails because the merits arguments Contrarian proffers do not, in fact, have any merit.

(1) Rule 3001(e) Does Not Mean What Contrarian Says It Means

27. Contrarian asserts that Bankruptcy Rule 3001(e) "[i]mplement[s] a broad policy in favor of the free transfer of claims [by] severely limit[ing] standing to challenge the transfer of claims." Mot. to Quash ¶ 2. That is not accurate. Bankruptcy Rule 3001(e) "merely establish[es] who is entitled to file a proof of claim and not what evidence is necessary to prove its ownership." *In re Kincaid*, 388 B.R. 610, 617 (Bankr. E.D. Pa. 2008). It is purely a procedural device that ensures the proper recording of those claims that have been validly transferred under applicable law. *See id*.

28. As a rule of procedure, Bankruptcy Rule 3001 does not – indeed, ***cannot***, under the Rules Enabling Act – override the anti-assignment provisions in the Debtors' Notes. The Rules Enabling Act provides that the Bankruptcy Rules "shall not abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. Any Bankruptcy Rule that dictates a substantive result, rather than a matter of procedure, it is invalid under section 2075. *See, e.g.*, *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 454 (2004) (noting that an obligation "which is required only by the [Bankruptcy] Rules" and could preclude a party from exercising a statutory right "would give the Rules an impermissible effect").[4] If Bankruptcy Rule 3001(e) did what Contrarian claims it does, then it would be invalid under the Rules Enabling Act.

29. Far from supporting Contrarian's argument that Bankruptcy Rule 3001(e) overrides anti-assignment provisions in instruments such as promissory notes, the three cases

[4] *Accord Caudill v. N.C. Mach., Inc. (In re Am. Eagle Mfg., Inc.)*, 231 B.R. 320, 331 (B.A.P. 9th Cir. 1999) (holding that former Bankruptcy Rule 2003(d) was invalid since it "would clearly abridge and modify the substantive rights of creditors" under the statute); *In re Nat'l Store Fixture Co.*, 37 B.R. 481, 489–90 (Bankr. W.D. Mo. 1984) (invalidating former Bankruptcy Rule 5002 because "it abridges and modifies substantive rights"); *see also Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941) ("The test must be whether a rule really regulates procedure, – the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them.").

Contrarian cites – *Preston Trucking Co. v. Liquidity Solutions, Inc.(In re Preston Trucking Co.)*, 333 B.R. 315 (Bankr. Md. 2005), *In re Lynn*, 285 B.R. 858 (Bankr. S.D.N.Y. 2002), and *Viking Associates, LLC. v. Drewes (In re Olson)*, 120 F.3d 98 (8th Cir. 1997), *see* Mot. to Quash ¶¶ 20–21 – have nothing to do with anti-assignment provisions. *In re Preston Trucking Co.* involved laid-off workers' assignment of their priority wage claims and WARN Act claims to a claims buyer for 35-cents-on-the-dollar – a deal the workers tried to re-trade when the assigned claims were thereafter paid in full. *See* 333 B.R. at 319–20. In *In re Lynn*, someone with personal animosity toward the debtor paid $50 in exchange for a $177,107.50 claim in the debtor's chapter 7 case, allegedly for the sole purpose of harassing the debtor. 285 B.R. at 860–61. And in *In re Olson*, disappointed bidders for an asset of the estate purchased all outstanding unsecured claims in an attempt to have the bankruptcy dismissed so that they could buy the asset they wanted from the debtor herself rather than negotiate with the chapter 7 trustee. 120 F.3d at 100. None of the claims at issue in these cases had restrictions on assignability.

30. The mechanism by which the Debtors can enforce the anti-assignment provisions in the Notes is not by objecting to claim transfers under Bankruptcy Rule 3001(e). Instead, "a challenge to the standing of a claimant is a substantive objection under § 502(b)(1), which provides a claim may be disallowed to the extent the claim is unenforceable against a debtor under any applicable law, including state law." *In re Richter*, 478 B.R. 30, 48 (Bankr. D. Colo. 2012). That is why the Claim Objection to the Contrarian Proof of Claim rests on Bankruptcy Code section 502(b)(1), and cites persuasive authority from around the country sustaining objections to claims that were invalid in the hands of the transferees who held them because the transfer was invalid. *See, e.g.*, *In re King*, 2016 Bankr. LEXIS 2443, at *21–23, 2016 WL 3648524, at *7–8 (Bankr. E.D.N.C. June 30, 2016) (where an attempted assignment of claim was

unenforceable, the putative assignor, not the putative assignee, was the proper holder of the claim); *In re Spiers*, 2015 Bankr. LEXIS 1901, at *9–10 (Bankr. W.D.N.C. June 10, 2015) (where a state court order prohibited the claimant from assigning its claim, the claimant's attempt to transfer such claim to the putative assignee was invalid and legally unenforceable); *In re Foy*, 469 B.R. 209, 214–15 (Bankr. E.D. Pa. 2012) (sustaining debtor's objections under § 502(b)(1) to certain transferred claims because under applicable state law, the partial assignment of a judgment requires the consent of the judgment debtor and the putative assignee did not obtain such consent, thus the assignments were "a legal nullity" under state law); *Pursley v. eCast Settlement Corp.* (*In re Pursley)*, 451 B.R. 213, 232–34 (Bankr. M.D. Ga. 2011) (sustaining debtor's objection under § 502(b)(1) to claim asserted by assignee on the basis that the assignee failed to prove a valid assignment of the claim that would be enforceable under state law); *see also In re Gillbreath*, 409 B.R. 84, 121 (Bankr. S.D. Tex. 2009) ("In order to establish the validity of [these] proofs of claim … over the Debtors' objection, [the putative assignee] had the burden of proving that it actually owns the claims.").

(2) UCC Section 9-408 Does Not Void Anti-Assignment Provisions in Promissory Notes

31. Contrarian cites no authority whatsoever in support of its assertion that "Section 9-408 of the UCC renders ineffective a contractual provision that requires the consent of the maker of a promissory note before the note may be transferred." Mot. to Quash ¶ 24. That is not surprising, because Contrarian's interpretation is wrong. It is contrary to the statutory text, the official comments, and the case law, all of which make clear that section 9-408 applies only to transactions involving the grant or transfer of a ***security interest*** in a promissory note, not an outright ***sale*** of a promissory note.

32. Section 9-408(a) of the Delaware Uniform Commercial Code provides:

> Except as otherwise provided in subsection (b), a term in a promissory note [that] prohibits, restricts, or requires the consent of the person obligated on the promissory note … to the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note … is ineffective to the extent that the term:
>
> (1) would impair the creation, attachment, or perfection of a security interest; or
>
> (2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note …. [Del. Code Ann. tit. 6, § 9-408(a).]

33. Section 9-408(b), in turn, limits the scope of section 9-408(a): "Subsection (a) applies to a security interest in a payment intangible or promissory note …." *Id.* § 9-408(b). "'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation." *Id.* § 1-201(35).[5]

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[5] The Motion to Quash misleadingly suggests that any purchased promissory note is somehow itself a "security interest" – even when there is no repayment or performance to secure. *See* Mot. to Quash ¶ 23 ("Section 1-201 of the UCC defines 'security interest' to include 'any interest of … a buyer of … a promissory note in a transaction that is subject to Article 9." (ellipses in original)). In fact, the pertinent portion of the definition has two sentences: the first (quoted in the text above) states what the term security interest "means," and the second (selectively quoted, with plenty of ellipses, in the Motion to Quash) indicates what the term may "include[,]" depending on the circumstances. The full definition is as follows:

> "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 2-401, but a buyer may also acquire a "security interest" by complying with Article 9. Except as otherwise provided in § 2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 1-203.

Del. Code Ann. tit. 6, § 1-201(35). In context, it is clear that a security interest is an interest that secures repayment of a debt or performance of an obligation. The second sentence of the definition merely indicates that a lender can

(footnote continued)

34. Here, Section 9-408(a) does not apply because Contrarian does not hold any security interest in the Notes. Contrarian did not lend money to the Noteholders at all – let alone lend any money for which the repayment obligation is secured by a Noteholder's interest in his or her own Note (as would be required for Contrarian's interest in the Notes to qualify as a security interest, rather than the straightforward title that Contrarian purports to hold). The Debtors dispute that any valid purchase was effected (given that the anti-assignment provision renders "null and void" any purported transfer made without the Debtors' consent), but regardless, Contrarian cannot seriously contend that it holds a security interest in any Notes. Accordingly, section 9-408 has no applicability.

35. The official comments confirm that section 9-408(a) does not apply to a sale of a promissory note out of which no security interest arises. *See* Del. Del. Code Ann. tit. 6, § 9-408, cmt. 4 ("Subsection[] (a) … render[s] ineffective restrictions on assignments only 'to the extent' that the assignments restrict the 'creation, attachment, or perfection of a security interest,' including sales of payments intangibles and promissory notes. This section does not render ineffective a restriction on an assignment that does not create a security interest."). And the case law is in accord. *See Day*, 2017 U.S. Dist. LEXIS 90135, at *22–23, 2017 WL 2563234, at *8 (holding that "§ 9-408 would be implicated if the [Bank] granted or transferred a security interest in the promissory note to a third party …. In reality, the [Bank] has not granted or transferred a security interest in the [promissory note], it has purportedly assigned, transferred, and set over the Promissory Note to [Plaintiffs]." (emphasis, internal quotation marks, and alterations omitted)).

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acquire a security interest in a promissory note "in a transaction that is subject to Article 9" (such as by lending money in a transaction in which repayment is secured by the borrower's interest in a promissory note).

36. The actual portion of the UCC that applies here is section 9-406, which Contrarian does not cite. In certain situations, subsection (d) of that section can override contractual restrictions on the sale of promissory notes, *see* Del. Code Ann. tit. 6, § 9-406(d) ("a term in … a promissory note is ineffective to the extent that it … prohibits restricts, or requires the consent of the … person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the … promissory note …"), but it does not apply here by virtue subsection (e): "Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620." *Id.* § 9-406(e).[6] Thus, the relevant provision in the UCC that Contrarian neglects to cite (§ 9-406) upholds the enforceability of anti-assignment provisions in the sale of promissory notes, and the provision on which Contrarian rests its argument (§ 9-408) applies only to grants of security interests.

37. In short, the Uniform Commercial Code does not render anti-assignment clauses in promissory notes null and void. If it did, then the case law would not be replete with promissory notes containing anti-assignment provisions, *see*, *e.g.*, *Gragert v. Lake*, 541 F. App'x 853, 858 (10th Cir. 2013) (promissory note's anti-assignment provision rendered it illiquid and thus not an available "resource" for purposes of social insurance program eligibility); *Davis v. United States*, 961 F.2d 53, 55 (5th Cir. 1991); *Dzikowski v. Moreno (In re V.O.C. Analytical Labs., Inc.)*, 263 B.R. 156, 158 (S.D. Fla. 2001), and Contrarian would have some case law authority in support of its UCC argument.

[6] The referenced sections 9-610 and 9-620 pertain to sales by a secured party post-default and retention of collateral by a secured party post-default, respectively. Del. Code Ann. tit. 6, §§ 9-610 & 9-620. Neither is implicated here.

(3) A Counter-Party's Material Breach Does Not Void the Anti-Assignment Provisions in Promissory Notes (Or Any Other Contracts)

38. Contrarian asserts that "by failing to pay principal and interest when due, ... the Debtors have materially breached the terms of the Notes" and therefore "cannot enforce other terms of the Notes to the detriment of the non-breaching Noteholders." Mot. to Quash ¶ 27. This is not an accurate statement of the law. To be sure, the doctrine sometimes referred to as "failure of consideration" or "first material breach" does in certain circumstances prohibit a party that is itself in material breach of a contractual obligation from insisting on due performance from its non-breaching counterparty. *See generally* Restatement (Second) of Contracts § 237; 14 Williston on Contracts § 43:1. If, for example, the underlying loan agreements between the Debtors and the Noteholders purported to require a second round of funding from the Noteholders (they do not), then a material breach by the Debtors would be a defense to the Noteholders' obligation to advance even more funds to the Debtors. It is that proposition – which has no applicability here – that is described in the two cases cited by Contrarian. *See* Mot. to Quash ¶ 26 (citing *BioLife Sols., Inc. v. Endocare, Inc.*, 838 A.2d 268, 278 (Del. Ch. 2003), and *Hipcricket, Inc. v. mGage, LLC*, No. CV 11135-CB, 2016 WL 3910837, at *1 & *11 (Del. Ch. July 15, 2016)).[7]

[7] Neither case cited by Contrarian is on-point. The court in *BioLife* concluded that one party's failure to timely deliver certain assets under the parties' agreement was not a material breach that would excuse the other party's performance, reasoning that "a slight breach by one party, while giving rise to an action for damages, will not necessarily terminate the obligations of the injured party to perform under the contract." 838 A.2d at 278–82. In *Hipcricket*, the court enforced a choice of law provision in a breached contract, *see* 2016 WL 3910837, at *12, but refused to enforce the portion of the breached contract that would have prevented the non-breaching party (a salesperson who did not receive the commissions he had been promised) from soliciting customers from the breaching party (his former employer). *See* 2016 WL 3910837, at *15. This result is entirely consistent with the first-material-breach rule articulated in the Restatement: Having materially breached its obligations to pay its former employee the commissions he was owed, the employer could not simultaneously insist on due performance from the former employee. The employer was therefore not entitled to an order enforcing the agreement by barring the former employee from soliciting customers or employees of the former employer.

39. One party's material breach of a contract does not mean that the contract itself – including its standard choice of law, choice of forum, anti-assignment, and other similar provisions – somehow disappears. If it did, no debtor could ever enforce any provision in an executory contract or unexpired lease if the debtor had defaulted prepetition. Judge Silverstein's decision in *Diamondhead*, 2016 Bankr. LEXIS 2450, 2016 WL 3284674, is characteristically apt. There, the involuntary debtor asserted that one of the petitioning creditors' claims was the subject of a bona fide dispute because, *inter alia*, the claim was based on a promissory note that was assigned to it in violation of an anti-assignment provision in the note. 2016 Bankr. LEXIS 2450, at *40–41, 2016 WL 3284674, at *14. The petitioning creditors argued that the debtor was in material breach of the note based on its failure to pay and therefore could not enforce the anti-assignment provision in the note. 2016 Bankr. LEXIS 2450, at *45, 2016 WL 3284674, at *15. Judge Silverstein rejected this argument as "untenable," reasoning that the debtor's breach did not improve its counter-party's contractual rights. 2016 Bankr. LEXIS 2450, at *46, 2016 WL 3284674, at *15.

40. *Diamondhead* comports with the Restatement's first-material-breach rule, which treats one party's due performance as an implied condition of the counter-party's due performance. "A material failure of performance," then, affects only "the other party's remaining ***duties of performance*** with respect to the exchange. It prevents performance of those duties from becoming due, at least temporarily, and it discharges those duties if it has not been cured during the time in which performance can occur." *Id*. cmt. a (emphasis added); *accord id*. cmt. e ("Under the rule stated in this Section, only duties with respect to the performances to be exchanged under the particular exchange of promises are affected by a failure of one of those performances."). Here, the Debtors are not demanding further "performance" from their non-

breaching counter-parties (as would be the case if, for example, the Debtors attempted to insist that Noteholders lend ***more*** money pursuant to the loan agreements). As such, the first-material-breach rule is not implicated.

41. The Fourth Circuit's decision in *Monster Daddy, LLC v. Monster Cable Products*, 483 F. App'x 831 (4th Cir. 2012), is instructive. There, the parties had entered into a settlement agreement that required any action against one another to be brought in a South Carolina court. *Id*. at 833. When Cable Products filed an action against Monster Daddy in California, Monster Daddy (which was in material breach of the trademark terms in the contract) relied on the forum selection clause to argue that the case had to be heard in South Carolina. *Id*. at 833–34. Cable Products responded that the forum selection clause was unenforceable on account of Monster Daddy's breach. *Id*. at 834. The Fourth Circuit rejected that argument:

> Cable Products' reliance on the prior material breach doctrine is misplaced.… Here, performance under the forum selection clause was not dependent upon the performance of any other contract provision contained in the settlement agreement. In fact, the unambiguous language of the forum selection clause does not mention any other term, clause, or obligation in the settlement agreement…. Accordingly, because the forum selection clause was an independent promise bearing no relationship to the alleged prior material breach, the 'first material breach' doctrine was inapplicable as a defense in this case. [*Id*. at 835–36.]

42. Just as the Fourth Circuit concluded that Monster Daddy's alleged material breach of the trademark terms in its contract with Cable Products did not render unenforceable the forum selection clause in the parties' agreement, there is no basis for this Court to hold that even a material breach by the Debtors of their payment obligations under the Notes vitiates the anti-assignment provision in the Notes.[8]

[8] Here, too, there is also a standing problem: Contrarian is not a party to any of the Notes or the loan agreements, and thus has no standing to argue the respective rights of the Noteholders. *See supra* note 2 (preserving all standing and other procedural arguments, which will be raised in opposition to the Note Motion itself).

C. Discovery Is Permissible and Appropriate in Any Event

43. Contrarian implies that the relief it seeks in the Note Motion is wholly customary and will merely bring these Chapter 11 Cases in line with other bankruptcy cases around the country. *See, e.g.*, Note Mot. ¶ 17 ("The assignment of claims is extremely common in bankruptcy cases and promotes greater liquidity."). Not so. The Debtors have not attempted and are not attempting to restrict anyone from transferring anything that is routinely transferred in bankruptcy cases. Trade vendors, counter-parties to rejected leases and executory contracts, and other holders of other general unsecured claims against the Debtors are and always have been free to trade their claims as they see fit, just as in any other case. What is at issue in the Note Motion is something else entirely: The Notes themselves contain express anti-assignment provisions that are presumptively valid and have not been invalidated by any statute, rule, or order, and Contrarian seeks to void those restrictions on the grounds of, *inter alia*, "public policy" and "equity." The tailored discovery sought by the Debtors is necessary and appropriate to develop a proper factual record against which the Court can evaluate Contrarian's request.

(1) The Note Motion's Appeals to Equity and Public Policy Open Contrarian's Good Faith and Fair Dealing to Discovery

44. The Note Motion places Contrarian's good faith and the terms on which Contrarian is attempting to acquire Notes squarely at issue by, *inter alia*, explicitly appealing to equitable considerations as grounds for voiding the anti-assignment provisions. *See* Note Mot. ¶ 17 ("[A]s a matter of public policy, the consent provisions should not be enforced [and] the Court should, as a matter of equity, authorize the transfer of Notes without the Debtor's consent in view of the policy favoring assignability of claims."). Contrarian has thus invited scrutiny of its motives, its conduct, and its "conscience and good faith." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814–15 (1945); *accord Root Ref. Co. v. Universal Oil*

Prod. Co., 169 F.2d 514, 534–35 (3d Cir. 1948) ("No principle is better settled than the maxim that he who comes into equity must come with clean hands and keep them clean throughout the course of the litigation, and that if he violates this rule, he must be denied all relief whatever may have been the merits of his claim.").

45. As previewed in a recent filing that pertained to scheduling, the Debtors are aware of one particular solicitation made by Contrarian purporting to be an "offer of 82 cents per dollar for your Note, which must be recognized and allowed by the Debtor." *See* Scheduling Response & Cross-Mot. Ex. A. It appears that the actual price Contrarian is offering is in the 20- to 25-cent range, and that the 82-cent "offer" in the solicitation is conditioned on the Debtors agreeing that the Notes are secured – a position the Debtors have disputed since literally the first day in these Chapter 11 Cases. At best, this appears to be a bait-and-switch-type solicitation (piquing interest with a headline number – 82 cents – that in reality will never be paid). At worst, the solicitation may be intentionally and materially misleading. Either way, it "has immediate and necessary relation to the equity that [Contrarian] seeks in respect of the matter in litigation," *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933), and is thus a proper topic of discovery.

(2) The Anti-Assignment Provisions Are Presently In Place and Effective

46. Although Contrarian seeks to invalidate the anti-assignment provisions in the Notes, to date the provisions remain operative and effective and enforceable by the Debtors. It is therefore perfectly proper to permit discovery into Contrarian's efforts to acquire Notes in violation of the anti-assignment provisions. This discovery is necessary to test the disputed factual assertions Contrarian has offered in support of its attempt to void the anti-assignment provisions, including in particular Contrarian's claim that the Debtors are "perversely caus[ing] further harm to the same defrauded creditors the Debtors claim to want to protect," Note Mot.

¶ 2, and even "inflict[ing] a second injury upon the Noteholders," *id*. ¶ 15. These assertions are material to the Note Motion (otherwise Contrarian would not have made them), and the Debtors have reason to believe that there is evidence to be adduced in discovery that contradicts them.

47. In addition to the 82-cent "offer" described previously, *see supra* ¶ 45 (discussing Exhibit A to the Scheduling Response & Cross-Motion), the Debtors are aware of other solicitations in the marketplace that require Noteholders to make certain representations as a condition to acceptance – representations that are factually inaccurate. Attached hereto as **Exhibit A** is a recent (April 10, 2018) solicitation sent by another claim buyer (Fair Harbor Capital) that conditions its acceptance on the selling Noteholder "represent[ing], warrant[ing] and covenant[ing]" that the Noteholder will provide "good title" to the Note, that "no objection … has been filed or threatened," and that the Debtor "has no basis to assert … any defense" or argue for "disallowance … whether on contractual, legal or equitable grounds …." Those representations are untrue: As demonstrated by the Debtors' Claim Objection with respect to the Note Contrarian purported to purchase in violation of the anti-assignment provisions, the Debtors do in fact have a Bankruptcy Code section 502(b)(1) objection to each and every claim that rests on a Note that has been transferred in violation of the anti-assignment provisions, and the Debtors do intend to raise those objections. To the extent the claims buyer has an "out" in the event the representations it seeks from Noteholders prove untrue, the entire transaction has a heads-I-win-tails-you-lose quality: The claims trader can attempt to stand by those transactions that it ultimately finds beneficial yet walk away from transactions that do not ultimately work out in its favor.[9]

[9] *See* Ex. A at p. 2, under the heading Representations; Warranties and Covenants ("Seller acknowledges and unconditionally agrees any misrepresentation or breach by Seller may cause Purchaser irreparable harm and accordingly, Purchaser shall be entitled to all available remedies as may be available to Purchaser for any such

(footnote continued)

48. Likewise, the specific facts of these Chapter 11 Cases – which involve a massive and long-running Ponzi scheme – raise key questions about the representations Noteholders are being induced to make to claim buyers concerning the value of their Notes. Under the Plan Term Sheet, the consideration that will ultimately be distributed in respect of any Note will take into account the prepetition "interest" received by such Noteholder. *See* Plan Term Sheet at pp. 8–9 (definition of "Note Distribution Formula"). That is because in a Ponzi scheme, one victim's "interest" is actually money that was procured by fraud from another, later-in-time victim.[10] Thus, the holders of two Notes that are identical in face amount and that are scheduled in identical amounts may ultimately receive different distributions, depending on the amount of prepetition "interest" that was paid. Thus, depending on the representations that claim buyers such as Contrarian may be inducing Noteholders to make, it is entirely possible Noteholders could be exposed to claims for breach. *See supra* note 9. There may also be misrepresentations or omissions concerning the material tax benefits with respect to timing-of-losses that Noteholders may enjoy as a result of the stipulated December 2017 discovery date of the Ponzi scheme. At a bare minimum, these are fair topics for discovery.

(3) The Fact That the SEC Has Alleged That the Notes Are Unlawfully Unregistered Securities Counsels in Favor of More Information (Not Less) About Potential Material Representations and Omissions in Connection with Attempted Purchases and Sales of the Notes

49. Finally, it bears emphasis that the specific Notes that Contrarian seeks to buy, sell, and otherwise freely trade and transfer have been alleged by the SEC to be unregistered

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misrepresentation, breach or threatened breach, including but not limited to immediate recovery of money damages ('Restitution') including without limitation a 'Restitution Payment', as further defined below.").

[10] *See, e.g.*, *Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir. 2011); *Donell v. Kowell*, 533 F.3d 762, 770-72 (9th Cir. 2008); *AFI Holding, Inc. v. Mackenzie*, 525 F.3d 700, 708-09 (9th Cir. 2008); *Geltzer v. Barish (In re Geltzer)*, 502 B.R. 760, 770 (Bankr. S.D.N.Y. 2013); *Fisher v. Sellis (In re Lake States Commodities, Inc.)*, 253 B.R. 866, 871-72 (Bankr. N.D. Ill. 2000).

securities that were unlawfully offered and sold in violation of the Securities Act and the Exchange Act. They are thus different in kind from ordinary claims in chapter 11 cases. The proposed purchase and sale of instruments the SEC has alleged are securities without a registration statement or valid exemption could create exposure under the Securities Act, and any misrepresentations Noteholders may be induced to make in connection with the purchase or sale of instruments that the SEC has alleged are securities could create exposure under the Exchange Act. These circumstances make it all the more important to permit appropriate, tailored discovery designed to reveal precisely what is going on in the marketplace – ***especially*** in the absence of a single on-point authority or comparable instance in which relief of this nature (a wholesale voiding of anti-assignment restrictions in thousands of individual instruments that federal and state regulators have charged are unlawfully unregistered securities) has ever been granted by any bankruptcy court in the country.

50. In short, if the marketplace has been contaminated with misrepresentations, deceptions, or sharp practices of the sort suggested by the (admittedly limited) solicitations and transfer terms of which the Debtors are currently aware, discovery into the scope and extent of such matters is necessary to, *inter alia*, test Contrarian's allegations that enforcement of the anti-assignment provisions "perversely caus[es] further harm to the same defrauded creditors the Debtors claim to want to protect," Note Mot. ¶ 2, and "inflict[s] a second injury upon the Noteholders," *id*. ¶ 15. The actual facts adduced in discovery may demonstrate that far from harming or re-victimizing Noteholders, enforcement of the anti-assignment provisions in the Notes is preventing violations of the Securities Act and Exchange Act.

CONCLUSION

51. For all of the foregoing reasons, the Debtors respectfully request that the Court deny the Motion to Quash and permit the Debtors to take targeted, appropriate discovery concerning the Note Motion.

Dated: Wilmington, Delaware
April 26, 2018

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Counsel for the Debtors
and Debtors in Possession

Exhibit A

FAIR HARBOR CAPITAL

1841 Broadway. 10th Floor. New York. New York 10023 www.FairHarborCapital.com Tel 212 967 4035. Fax 212 967 4148

Tuesday, April 10,2018

Limited Allocation - CASH Out

NOTE HOLDER [redacted] 135

RE: **Woodbridge Mortgage Investment Fund 3A, LLC**
~~*Part of the Bankruptcy fo Woodbridge Group of Companies, LLC, et al.*~~
U.S. Bankruptcy Court, District of Delaware
Bankruptcy Petition #: 17-12780 (KJC)

Dear Sir or Madam:

We are writing you to express indication of our interest in purchasing your claim of **$36,000.00** for a cash payment of **$7,740.00**. If you are interested in selling your claim please:

- Sign the attached Claim Purchase Agreement in where indicated,
- Attach copies of Promissory Note and Loan Agreement, and
- Return the entire document to us by fax (212) 967-4148, or email (proposals@fairharborcapital.com) and mail the original.

URGENT - This indication expires at the close of business on May 5th, 2018 and is subject to acceptance, further due diligence, and mutually agreeable documents of transfer. If accepted, payments are typically sent by mail within 10 business days (unless noted alternatively above). Funds may be sent by overnight delivery for a nominal charge.

This indication of interest is on a first-come, first-serve basis and the allocation for this case is limited and may be rescinded for any reason whatsoever without further notice or obligation from either party. Please do not delay. Please note that Fair Harbor Capital, LLC is not obligated to file any application, motion, Proof of Claim or other document with the Bankruptcy Court with regard to your claim.

Please do not hesitate to call at (866) 967 4035 with any questions or email at yknox@fairharborcapital.com.

Sincerely,

Victor Knox

Fair Harbor Capital, LLC*

* Please note, Fair Harbor Capital, LLC is an independent investment company not affiliated with or hired by the Debtor or the Bankruptcy Court.

Assignment of Claim. MARLENE BATES (hereinafter "Seller") with a principal address of [illegible] FL 33434. for good and valuable consideration in the sum of **$7,740.00** (the "Purchase Price"). does hereby absolutely and unconditionally sell. convey. and transfer to Fair Harbor Capital. LLC. and any of its successors. assign or designees (hereinafter "Purchaser") all of Seller's right. title. benefit and interest in and to any and all of Seller's pre-petition claim or claims, as more specifically set forth as any right to payment (the "Claim"), against **Woodbridge Mortgage Investment Fund 3A, LLC** ("the "Debtor"). in bankruptcy proceedings in the **United States Bankruptcy Court for the District of Delaware** (the "Court"). **Case No. 17-12780 (KJC) Jointly administered under the main case, 17-12560** (the "Case"); and includes any Proof of Claim (defined below). along with voting and any other rights and benefits which may now exist, or come into existence in regards the Claim. all cash securities. instruments and other property. to be paid or issued by Debtor or any other party. directly or indirectly. in connection with or satisfaction of the Claim. including without limitation "cure" amounts related to the assumption of an executory contract and any rights to receive all payments in respect thereof. and all rights to receive interest. penalties. fees and any damages from any cause of action. litigation or rights of any nature against Debtor, its affiliates, any guarantor or other third party, which may be paid or issued with respect to and/or in satisfaction of the Claim (the "Recovery"). This Claim Purchase Agreement (the "Agreement") shall be deemed an unconditional purchase of the Claim for the purpose of collection and shall not be deemed to create a security interest. Seller represents the Claim is in an amount not less than **$36,000.00** (the "Claim Amount"). In the event that any Recovery related to the claim is made payable or addressed to the Seller, Seller hereby authorizes Purchaser to deposit such Recovery into Purchaser's bank as if such Recovery was made payable or in the name of Purchaser.

Proof of Claim. Seller represents and warrants that (check one)

___ (i) a proof of claim in the amount of _____________ (the "Proof of Claim Amount") has been duly and timely filed in the Case; or

___ (ii) no proof of claim has been filed. For the avoidance of doubt, the term "Proof of Claim" shall include, unless expressly agreed to otherwise, (a) any and all multiple Proofs of Claim filed at any time, whether before or after the date of execution of this Agreement, by or on behalf of Seller in respect of the Claim and (b) any and all of Seller's documentation supporting the Claim. The parties agree that if the Proof of Claim Amount is less than the Claim Amount, the Purchase Price shall be reduced such that Seller shall be paid the pro rata share of the Purchase Price based on the lower Proof of Claim Amount.

Representations; Warranties and Covenants. Seller represents, warrants and covenants that, (a) Seller owns and has sole title to the Claim free and clear of any and all liens, security interests or encumbrances of any kind or nature whatsoever, including without limitation pursuant to any factoring agreement, and upon the sale of the Claim to Purchaser, Purchaser will receive good title to the Claim; (b) Seller has not previously sold, assigned, transferred, or pledged the Claim, in whole or in part, to any third party; (c) the basis for the Claim is amounts validly due from and owing by the Debtor; (d) the Claim is a valid, undisputed, liquidated, enforceable, and non-contingent claim against the Debtor for which the Debtor has no defenses and no objection to the Claim has been filed or threatened; (e) Seller has not engaged in any acts, conduct or omissions that might result in Purchaser receiving, in respect of the Claim, proportionately less payments or distributions or any less favorable treatment than other similarly situated creditors; (f) Debtor, or any other third party, has no basis to assert the Claim is subject to any defense, claim or right of setoff, reduction, impairment, disallowance, subordination or avoidance, including preference actions, whether on contractual, legal or equitable grounds;(g) that Seller is not "insolvent" within the meaning of Section 1-201 (23) of the Uniform Commercial Code or within the meaning of Section 101 (32) of the Bankruptcy Code; and (h) Seller is not an "insider" of the Debtor, as set forth in the United States Bankruptcy Code § 101(31), or a member of any official or unofficial committee in connection with the Case. Seller acknowledges and unconditionally agrees any misrepresentation or breach by Seller may cause Purchaser irreparable harm and accordingly, Purchaser shall be entitled to all available remedies as may be available to Purchaser for any such misrepresentation, breach or threatened breach, including but not limited to the immediate recovery of money damages ("Restitution") including without limitation a "Restitution Payment", as further defined below.

Execution of Agreement. This Agreement shall become effective and valid when (a) Seller executes this Agreement and it is received by Purchaser and (b) the Agreement is executed by a proper representative of Purchaser.

Consent and Waiver. Seller hereby acknowledges and consents to all of the terms set forth in this Agreement and hereby waives its right to raise any objections thereto pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

Claim or Recovery Impaired or Allowed for an Amount Less than Claim Amount or Case Conversion/Dismissal. If all or any part of the Claim or Claim Amount is (a) avoided, disallowed, subordinated, reclassified, reduced, objected to,or otherwise impaired, for any reason whatsoever including without limitation a breach of any of the terms or conditions of this Agreement; or (b) the Claim is subsequently scheduled by Debtor or is amended such that all or any portion of the Claim is listed on the Debtor's amended schedule of liabilities as unliquidated, contingent or disputed or in a lesser amount than the Claim Amount (each (a) and (b) a "Disallowance"), then Seller, shall make immediate Restitution and repayment of the proportional Purchase Price equal to the ratio of the amount of the Disallowance divided by the Claim Amount multiplied by the Purchase Price ("Restitution Payment"), no later than 30 days after receiving notice of such Disallowance. Such Restitution Payment shall be made together with interest, calculated at the rate of five (5%) percent per annum, from the date of Seller's execution of this Agreement until the date that such Restitution Payment is received by Purchaser. For clarity purposes, this paragraph pertains only to the validity of the Claim and not the Recovery. Notwithstanding the foregoing, in the event that the Debtor's bankruptcy case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, ownership of the Claim shall revert back to the Seller and all monies paid by Purchaser shall remit to Purchaser.

Notices (including Voting Ballots) Received by Seller; Further Cooperation. Seller agrees to immediately forward to Purchaser any and all notices received from Debtor, the Court or any other court or governmental entity or any third party regarding the Claim assigned herein and to take such other action, with respect to the Claim, as Assignee may request from time to time. More specifically, Seller shall take such further action as may be necessary or desirable to effect the transfer of the Claim and to direct any payments or distributions, or any form of Recovery on account of the Claim to Purchaser, including the execution of appropriate voting ballots, transfer powers and consents at Purchaser's sole discretion.

Recovery (including Cure Payments) Received or Delayed by Seller. In the event Seller, (i) receives any interim or final distribution of the Recovery, or any portion thereof, made payable on or after the date of Seller's execution of this Agreement; or (ii) delays or impairs Purchaser's right to Recovery for any reason (each (i) and (ii) a "Delayed Recovery Event"), then Seller agrees to (a) accept any Recovery the same as Purchaser's agent and to hold the same in trust on behalf of and for the sole benefit of Purchaser and shall promptly deliver the same forthwith to Purchaser in the same form received, or in a form reasonably requested by Purchaser, free of any withholding, set-off, claim or deduction of any kind and/or (b) settle or cure the reason for the Delayed Recovery Event (each(a) and (b) a "Settlement") within ten (10) business days of the Delayed Recovery Event (the "Settlement Date"). Seller shall pay Purchaser interest, calculated at the rate of five (5%) percent per annum of any amount or portion of Recovery that incurs a Delayed Recovery Event, for each day after the Settlement Date until such Recovery is received by Purchaser.