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BY HAND DELIVERY AND FILE & SERVEXPRESS

The Honorable Kathaleen St. Jude McCormick
Court of Chancery
Leonard L. Williams Justice Center
500 North King Street, Suite 11400
Wilmington, Delaware 19801

Re: *Kuramo Capital Management, LLC v. Larry Seruma, et al.*,
C.A. No. 2021-0323-KSJM (Del. Ch.)

Dear Chancellor McCormick:

I write on behalf of the Nile Fund Parties following the Court's April 30, 2024, Post-Trial Opinion in the above-referenced action (the "Opinion"), in which the Court "granted [the parties] leave to submit letters identifying any arguments or claims that they believe were fairly raised but that this decision does not address." Opinion at 93.¹ As set forth below, the Nile Fund Parties respectfully submit that the Opinion did not address the following issues, which were fairly raised in Nile's post-trial briefing: (i) Kuramo's misappropriation of the Nile Fund Parties' management fees, and (ii) the proper source of collateral for the 2020 Bridge Loan.

¹ Undefined capitalized terms carry the meanings set forth in the Opinion.

The Opinion further provided that “[e]ach side shall have the opportunity to respond to the other’s submission.” Opinion at 94. Although the Parties had agreed to submit letters simultaneously on June 7, followed by reply letters to be submitted on June 25, Kuramo unilaterally submitted its letter on May 29. *See* Dkt. No. 311. Absent further direction of the Court, the Nile Fund Parties will respond to Kuramo’s May 29 letter on June 25.²

I. Kuramo Misappropriated The Nile Fund Parties’ Management Fees

The Opinion contemplates a judgment awarding rescission “restor[ing] the parties to the bargain Seruma told Kuramo he was executing—where Kuramo holds 97.16% of KN Agri Series B, and KN Agri Series B holds Feronia KNM, which holds the PHC asset.” Opinion at 92.³ That bargain included the Nile Fund Parties’ right to management fees.⁴ Kuramo misappropriated millions of dollars in fees. Since February 2021, Kuramo has excluded the Nile Fund Parties from the

² Dkt. No. 313 (Nile’s Response Letter re: Scheduling)

³ For the avoidance of doubt, this letter is intended solely to identify issues “not addressed” in the Opinion and should not be construed as a waiver of the Nile Fund Parties’ appellate rights.

⁴ Nile-Br. 97-99. “Nile-Br.” refers to the specified page or section of The Nile Fund Parties’ Opening Post-Trial Brief, dated July 14, 2023.

management of PHC and collected management fees for doing so.⁵ Indeed, “[i]n 2022, Kuramo and Mafuta received more than \$13 million in fees from PHC, which they did not distribute to any of the Nile Fund Parties.”⁶ The Opinion does not address whether and on what basis Kuramo should be permitted to retain that \$13 million (or any other fees Kuramo has collected from PHC) or the amount of fees to which the Nile Fund Parties are entitled. This issue was raised in the Nile Fund Parties’ Corrected Pre-Trial Brief,⁷ the Nile Fund Parties’ Corrected Opening Post-Trial Brief,⁸ and in the Nile Fund Parties’ Answering Post-Trial Brief.⁹

II. Collateral For The 2020 Bridge Loan

There is no dispute that the “Consortium agreed to provide, or to cause an affiliate to provide, up to \$15 million in additional bridge loans to Feronia (the “2020 Bridge Loan”).” Opinion at 22. The Opinion provides that “KN Agri breached the

⁵ Nile-Br. 84-91.

⁶ Nile-Br. 96; *see also id.* at 99 (“Pallan further testified that Kuramo and Mafuta received more than \$13 million in management fees from PHC in 2022 alone, none of which they shared with (or even disclosed to) the Nile Fund Parties.”) (citing TT_(Pallan)_ (510:23-511:13)).

⁷ *See* Nile Pre-Trial Brief. Sections I(A)(1); I(B)(2); I(D).

⁸ *See* Nile-Br. Argument Section I(D).

⁹ *See* Nile Post-Trial Answering Brief Argument Section I(A)(1).

2020 Bridge Loan Agreement” (*i.e.*, failed to pay back the funds loaned to KN Agri) without specifying a remedy (*id.* at 89), and further that (ii) “Mpala remains ring-fenced in KN Agri Series C” (*id.* at 93). The Opinion does not expressly address, however, the impact of these holdings on Mpala as a source of collateral for the 2020 Bridge Loan.

Summarizing Nile’s contentions, the Opinion provides that “the parties agreed that, **in exchange for Mpala**, Seruma would acquire a 60% interest in KN Agri. And in exchange for fully funding and then converting to equity the \$15 million 2020 Bridge Loan, Kuramo would acquire a 40% interest in KN Agri.” Opinion at 41 (emphasis supplied). As Nile explained:

The advantage for [Kuramo] CIV III as a lender is that they would enforce any non-payments on the assets of KN Agri. And that would include Mpala.” Thus, no matter how the restructuring turned out, Kuramo could “still enforce its loan on KN Agri.” Thus, Seruma agreed to put Mpala—a \$22.5 million asset—at risk to facilitate the restructuring of Feronia Inc.¹⁰

The Nile Fund Parties argued that they made a “commitment to put [Mpala] against the success of the PHC asset.”¹¹ The Court squarely rejected these contentions.¹²

¹⁰ Nile-Br. 44-45.

¹¹ Nile-Br. 45, n.235 (quoting TT_(Seruma) (1182:2-4)).

¹² Opinion 59.

Given that (i) the funds disbursed pursuant to the 2020 Bridge Loan Agreement were “provided with the agreement that KN Agri would loan them to PHC for working capital and to pay transaction costs,¹³ (ii) the Court’s rejection of the 60/40 split of KN Agri (Opinion at 59), (iii) the Court’s holding that “KN Agri Series B holds Feronia KNM, which holds the PHC asset” (*id.* at 92), and (iv) the Court’s holding that “Mpala remains ring-fenced in KN Agri Series C” (*id.*), the Nile Fund Parties respectfully submit that it necessarily follows that KN Agri Series B—not KN Agri Series C (*i.e.*, Mpala)—is the proper collateral for 2020 Bridge Loan. Moreover, rescission is an equitable remedy, and it would be fundamentally inequitable to reject the 60/40 (Mpala/PHC) split of KN Agri, declare that Kuramo indirectly owns 97.6% of the “PHC asset,” and simultaneously hold that Mpala is encumbered by the 2020 Bridge Loan Agreement, the proceeds of which were expended on PHC, not Mpala.

We are available at the Court’s call should Your Honor have any questions.

¹³ Nile-Br. 125; *see also* Kuramo Opening Post-Trial Brief at 44-45.

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Respectfully,

/s/ Eric A. Veres

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