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July 22, 2010

VIA OVERNIGHT MAIL

Hon. Victor Marrero
United States District Court Judge
Daniel Patrick Moynihan United
States Courthouse
500 Pearl Street
New York, New York 10007-1312

**Re: *Anwar, et. al. v. Fairfield Greenwich Limited, et. al.*,
09-CV-118 (VM) (THK)**

Dear Judge Marrero:

We are counsel to Plaintiffs Jose Antonio Pujals and Rosa Julieta A. De Pujals (the "*Pujals* Plaintiffs"), and write in response to the letter to Your Honor, of yesterday's date, submitted by Defendants Standard Chartered International (USA), Ltd., Standard Chartered Bank International (Americas) Ltd. and Standard Chartered PLC (collectively, the "Standard Chartered Defendants").

In their submission, the Standard Chartered Defendants opposed the *Pujals* Plaintiffs' request, in their July 20, 2010 letter addressed to Your Honor, that this Court direct the Standard Chartered Defendants to answer the pending Complaint in the *Pujals* action.

In chief, the Standard Chartered Defendants argue that Paragraph 7 of Magistrate Judge Katz's January 29, 2010 Initial Scheduling Order (the "Initial Scheduling Order" or "Order") obviates the requirement that the Standard Chartered Defendants answer or respond to the *Pujals* Complaint.

Respectfully, the Standard Chartered Defendants are incorrect. Paragraph 7 of the Initial Scheduling Order states that the Standard Chartered Defendants are not required to:

answer, move or otherwise respond in any case that contains ***claims and factual assertions that are similar to those alleged in the Standard Chartered Cases*** and is filed in or transferred to this Court after the date specified in Paragraph 1 above. (Emphasis added.)

Thus, the Standard Chartered Defendants' obligation to respond or answer was only stayed as to later

filed or transferred actions that contained claims similar to those asserted in the “Standard Chartered Cases.” The Order expressly defined the Standard Chartered cases.¹ *Pujals* is not listed as one of those cases and, moreover, the claims asserted in the Standard Chartered Cases are entirely different from the claims asserted in *Pujals*.

The Standard Chartered Cases largely assert individual statutory and common-law claims to recover investment losses based upon the Standard Chartered Defendants’ alleged failure to conduct due diligence and ascertain the true risk of investing in the Fairfield Sentry Fund.

Pujals is entirely different in kind. *Pujals* is a putative class action that only seeks to recover administrative, management, and other fees improperly charged by the Standard Chartered Defendants in breach of their agreement with the Plaintiffs. The causes of action pleaded – *i.e.*, breach of contract and unjust enrichment – do not rest on any allegations of a purported failure to conduct due diligence. Nor do they require any discovery of the due diligence performed (or not performed). In short, the claims raised in *Pujals* (and the facts underlying those claims) are entirely different from the claims raised in the Standard Chartered Cases (and the facts underlying the claims raised in those cases).

Highlighting that *Pujals* is unique, a disposition of the pending Motion(s) to Dismiss the claims raised in the Standard Chartered Cases would have absolutely no bearing on the claims raised in *Pujals*.²

Even counsel for the Standard Chartered Defendants has acknowledged, on the record, more than once, that *Pujals* is distinct and not subject to any stay imposed by the Initial Scheduling Order. In fact, during the December 22, 2009 telephonic hearing before Judge Katz, which gave rise to his order (in essence carving out *Pujals*), counsel for the Standard Chartered Defendants specifically

¹The cases are: *Bhatia v. Standard Chartered International (USA) Ltd.*, No. 09-CV-02410; *Tradewaves Ltd. v. Standard Chartered International (USA) Ltd.*, No. 09-CV-09423; and *Headway Investment Corp. v. American Express Bank Ltd.*, No. 09-CV-8500 (the “Standard Chartered Cases”). The Order refers to *Lopez v. Standard Chartered Bank International (Americas) Ltd.*, No. 10-CV-0919; *Maridom Ltd. v. Standard Chartered Bank Internatinal (Americas) Ltd.*, No. 10-CV-0920; and *Maria Akriby Valladolid v. American Express Bank, Ltd.*, No. 10-CV-0918 as the “CTO-1 cases.

²The Standard Chartered Defendants devote much of their argument to the fact that the Judicial Panel on Multi-District Litigation found *Pujals* to be factually similar enough to warrant transfer. That, however, is an entirely different standard from that contemplated by Judge Katz’s Initial Scheduling Order. Again, a disposition of the pending Motion(s) to Dismiss in the Standard Chartered Cases would have no bearing on *Pujals*. *Pujals* is distinct.

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acknowledged that the claims in *Pujals* were fundamentally different from the Standard Chartered Cases and that their response to the Complaint only would be held in abeyance until the Standard Chartered Defendants knew "where" *Pujals* would ultimately reside.

Specifically, Counsel for the Standard Chartered Defendants stated during the hearing:

Ms. Nelles: Your Honor, I just want the court to be aware that in addressing these 6 complaints **and I agree the Pujals complaint is distinct**, but of the 6 other complaints we are going to have three federal security law claims, Florida law, California law and Singapore law

Then later in the hearing acknowledged:

The Court: So the Pujals case you are saying the motion to dismiss is already briefed?

Mr. Brodsky: Fully briefed.

The Court: So that we will **just hold in abeyance until we know where its going to be, correct?**


Ms. Nelles: **That is correct.**³

Thus, the Initial Scheduling Order contemplated carving out *Pujals* from the Standard Chartered cases.


Because the claims and factual assertions in *Pujals* are entirely distinct from those asserted in the Standard Chartered Cases, the Standard Chartered Defendants' obligation to respond to the *Pujals* Complaint was not suspended by Judge Katz's Initial Scheduling Order, and thus the Standard Chartered Defendants are in default.

The *Pujals* Plaintiffs thus respectfully request that this Court direct the Standard Chartered Defendants to answer the *Pujals* Complaint within a time frame that the Court deems proper.

Respectfully submitted,


David A. Rothstein, Esq.

cc: Counsel of record

The parties are directed to address the matter set forth above to Magistrate Judge <u>Theodore Katz</u> to whom this dispute has been referred for resolution, as well as for supervision of remaining pretrial proceedings, establishing case management schedules as necessary, and settlement.	
SO ORDERED.	
7-23-10	
Date	VICTOR MARRERO, U.S.D.J.

³A copy of the transcript is attached to this letter for the Court's convenience.

