

**Presentment Date: December 6, 2023, at 12:00 P.M. (ET)**  
**Objection Deadline: December 5, 2023 at 4:00 P.M. (ET)**

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*Counsel to the Official Committee of Unsecured  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

**NOTICE OF PRESENTMENT ON THE MOTION OF THE COMMITTEE OF  
UNSECURED CREDITORS FOR ENTRY OF AN ORDER PURSUANT TO FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 2004 AUTHORIZING THE EXAMINATION  
OF WITNESSES AND PRODUCTION OF DOCUMENTS**

**PLEASE TAKE NOTICE** that on or about August 30, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition

<sup>1</sup> The last four digits of Benitago Inc.’s tax identification number are 4084. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/benitago>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that the date hereof, the Official Committee of Unsecured Creditors (the “Committee”) appointed in these cases (the “Chapter 11 Cases”) filed a Motion for Entry of an Order Pursuant to Federal Rule of Bankruptcy Procedure 2004 Authorizing the Examination of Witnesses and Production of Documents (the “Motion”), pursuant to which the Committee seeks entry of the proposed order attached as **Exhibit A** to the Motion (the “Proposed Order”).

**PLEASE TAKE FURTHER NOTICE** that the deadline to object or respond to the relief sought in the Motion is **December 5, 2023 at 4:00 P.M. (prevailing Eastern Time)** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that objections or responses, if any, to the Motion and Proposed Order must be made in writing and filed with the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601-4140, and served so as to be actually received by the following parties no later than the Objection Deadline:

- i. the Honorable Sean H. Lane, United States Bankruptcy Judge for the Southern District of New York, United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601-4140;
- ii. counsel for the Official Committee of Unsecured Creditors, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036, Attn: Douglas Mannal, Esq. (dmannal@dechert.com); Gary J. Mennitt (gary.mennitt@dechert.com); and Pat Andriola (pat.andriola@dechert.com);

- iii. counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn: Kyle J. Ortiz, Esq. (kortiz@teamtogut.com) and Bryan M. Kotliar, Esq. (Bkotliar@teamtogut.com);
- iv. co-counsel to the Acrux Debtors, Klestadt Winters Jureller Southard & Stevens, 200 West 41st Street, 17th Floor, New York, NY 10036, Attn: Fred Stevens, Esq. (FStevens@Klestadt.com) and Sean Southard, Esq. (SSouthard@Klestadt.com);
- v. counsel to CoVenture – Bento Credit Opportunities GP, LLC and CoVenture – Bento Credit Opportunities SPV, LP (together, “CoVenture”), Greenberg Traurig, LLP, (i) One Vanderbilt Avenue, New York, NY 10017, Attn: Oscar Pinkas, Esq. (pinkasO@gtlaw.com), (ii) 77 Wacker Drive, Suite 3100, Chicago, IL 60601, Attn: Nancy Peterman, Esq. (petermanN@gtlaw.com), Eric Howe, Esq. (HoweE@gtlaw.com) and Danny Duerdoth, Esq. (duerdothD@gtlaw.com);
- vi. counsel to SellersFunding, Maurice Wutscher LLP, (i) 5 Walter E. Foran Blvd., Suite 2007, Flemington, NJ 08822, Attn: Thomas R. Dominczyk, Esq. (tdominczyk@MauriceWutscher.com), (ii) 23611 Chagrin Blvd. Suite 207, Beachwood, OH 44122, Attn: Alan C. Hochheiser, Esq. (ahochheiser@MauriceWutscher.com); and
- vii. the Office of the United States Trustee for Region 2, U.S. Federal Office Building, One Bowling Green, Suite 534, New York, NY 10004, Attn: Richard Morrissey, Esq. (Richard.Morrissey@usdoj.gov) and Annie Wells, Esq. (Annie.Wells@usdoj.gov).

**PLEASE TAKE FURTHER NOTICE** that if no objections are timely filed and served with respect to the Proposed Order by the Objection Deadline, the Committee shall, on or after

**December 6, 2023, at 12:00 p.m. (prevailing Eastern Time)** (the “Presentment Date”), submit to the Court the Proposed Order, which the Court may enter without further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion, and related filings, can be viewed and/or obtained by (i) accessing the Court’s website for a fee, (ii) visiting the website for the Debtors’ Chapter 11 Cases at: <https://cases.stretto.com/benitago>, or (iii) by contacting the Office of the Clerk of the United States Bankruptcy Court, Southern District of New York. Please note that a PACER password is required to access documents on the Court’s Website.

Dated: November 28, 2023  
New York, New York

Respectfully submitted,

*/s/ Douglas Mannal*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,<sup>2</sup>

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

**MOTION OF THE COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN  
ORDER PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004  
AUTHORIZING THE EXAMINATION OF WITNESSES AND PRODUCTION OF  
DOCUMENTS**

<sup>2</sup> The last four digits of Benitago Inc.'s tax identification number are 4084. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/benitago>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

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The Official Committee of Unsecured Creditors (the “Committee”) appointed in the cases (the “Cases”) of the above-captioned debtors and debtors in possession (the “Debtors”) under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), by and through the undersigned counsel, hereby moves the Court (the “Motion”) for the entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the examination of witnesses and production of documents. In support of the Motion, the Committee respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. By this motion, the Committee seeks to take discovery, pursuant to Bankruptcy Rule 2004, of the Debtors and the Debtors’ D&Os (as defined in Exhibit B to this Motion). The Committee is evaluating potential claims the estates may have against the Debtors’ D&Os. . The Debtors have represented that an internal investigation conducted by an independent director is currently pending. However, as of the date of this Motion, no findings regarding the conduct of the Debtors’ D&Os have been shared with the Committee.

2. In addition, the Committee has sent multiple diligence requests to Debtors and their professionals for documents necessary for the Committee to evaluate the reasonableness of any plan proposal and unsecured creditor recoveries. These requests included documents such as, inter alia, a history of cash flow transactions, audited financial statements, inventory ledgers, and other ordinary books and records. But these routine requests have not been wholly fulfilled. For over a month prior to this Motion, the Debtors did not upload any new documents to the data room provided to the Committee’s professionals.

3. The requested discovery is narrowly tailored to, inter alia, inform as to the Debtors’ D&Os’ prepetition conduct, the ongoing internal investigation, historical intercompany

transactions and operations, and the Debtors' sale and marketing process. Only upon receipt of this information will the Committee be able to evaluate the validity of the proposed plan term sheet, as well as potential claims the estate may have against the Debtors' D&Os

## **BACKGROUND**

### **I. The Debtors' Petitions for Chapter 11 Relief.**

4. On August 30, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court").

5. On September 15, 2023, the Office of the United States Trustee for Region 2 (the "U.S. Trustee") appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code [ECF No. 50]. The Committee consisted of the following three members: (i) Stefana-Veronica Sticlaru; (ii) CalMyotis (HK) Limited; and (iii) Daniel Samimi.

6. On September 19, 2023, the Committee selected Dechert LLP ("Dechert") to serve as its counsel. On September 21, 2023, the Committee selected Province, LLC ("Province") to serve as its financial advisor.

7. On October 24, 2023, Daniel Samimi resigned from the Committee. As of the date of this Motion, the Committee consists of the following two members: (i) Stefana-Veronica Sticlaru; and (ii) CalMyotis (HK) Limited.

8. On October 11, 2023, the Court entered the *Stipulated Confidentiality Agreement and Protective Order* [Dkt. No. 82] (the "Protective Order"). The Protective Order sets forth procedures for designating discovery materials as either "Confidential" or "Highly Confidential" and limiting the use of such materials.

## **II. The Committee's Informal Diligence Requests.**

9. Since shortly after its appointment, the Committee has been seeking informal discovery. The Committee's professionals have sought informal discovery from the Debtors' professionals on multiple occasions.

10. On September 24, 2023, shortly after the Committee's engagement of Province, Province sent a diligence list of nine requests (the "September 24 Diligence List") via e-mail to the Debtors' financial advisor, Portage Point Partners ("Portage"). The Debtors have provided some responses on a rolling basis, but as of the date of this Motion, the Committee had not received certain basic information, including, among many others, the Debtors' audited financial statements.

11. On October 5, 2023, Province had a call with Portage regarding the Debtors' accounting and questioned Portage's inability or unwillingness to provide access to the Debtors' books and records. Portage noted that the Debtors' historical financials needed restatement, which was ongoing.

12. On October 27, 2023, Province sent to the Debtors via e-mail a consolidated list of outstanding document requests ("October 27 Diligence List"), some of which were a part of the September 24 Diligence List, seeking to understand the Debtors' financials and business operations. The requested documents in the October 27 Diligence List include: (i) historical monthly product sales, by SKU for each Brand, showing Price/Volume/FX (if applicable) information; (ii) historical monthly product and site-traffic details, including all brands, across all regions/marketplaces, across all debtor-entities; (iii) historical monthly income statements, balance sheets, and cash flow statements for the Benitago Inc., Acrux LLC, Aludra Ltd., and Benitago Ltd entities; (iv) historical monthly income statements and balance sheets for all brands; (v) historical disbursements, including recipient, for all entities; and (vi) all SOFA /

SOAL data in Excel. In the same e-mail, Province again requested the Debtors’ historical accounting records.

13. The Debtors did not respond to the October 27 Diligence List until three weeks later, on November 20, 2023, when the Debtors provided an inventory file. Subsequently on November 25, 2023, the Debtors provided data room access for brand-level sales data.

14. Despite Province’s efforts to follow up with the Debtors on multiple occasions during the months of October and November, both verbally and via e-mail, the Debtors did not provide any books and records and related information until November 26, 2023, over three months since those documents were initially requested by the Committee on September 24, 2023. Specifically, on November 26, 2023, the Debtors provided the Committee with the general ledger, entity balance sheet details, intercompany transaction entries and historical inventory purchasing details. The Committee is in the process of reviewing the completeness of the newly provided documents.

15. As of the date of this Motion, a number of diligence requests in the September 24 Diligence List are still outstanding. A summary of the September 24 Diligence List is set forth below:

<b>Documents Requested</b>		<b>Status</b> (as of November 26, 2023)
1	All readily available company financials, internal accounting records, and other related information in Excel format, including: Trial Balances, audited financial statements, inventory detail, receivables & payables aging.	Partially received. The Debtors provided general ledgers, trial balances, receivables and payables aging, and transaction journals. The Debtors have not provided any audited financial statements.
2	History of cash payments and receipts, by entity, with counterparty identified. Documents requested dating back to 2020.	The Debtors have yet to provide any documents dating back to prior to 2022.
3	Detailed cash disbursement history, by entity, with receiving party identified.	Partially received. The Debtors have yet to provide any documents dating back to

<b>Documents Requested</b>		<b>Status</b> (as of November 26, 2023)
	Documents requested dating back to 2020.	prior to 2022.
4	All documents and communication related to the CoVenture and SellersFunding debt.	Received.
5	All documents and communication related to the intercompany agreement, including but not limited to redlined versions, underlying data, and supporting schedules (in Excel format, as applicable).	Partially received. The Debtors have yet to provide the underlying data.
6	Names of prospective Buyers that have expressed interest to-date, and all information being made available to them.	Partially received. The Debtors have yet to provide information that was made available to proactive buyers or any updates on their discussions since the initial list was provided.
7	Latest drafts of the CIM and all other marketing materials.	Not received.
8	Access to data room materials on a rolling basis.	Not received. The Debtors have not provided access to a data room dedicated to conducting the sale process that was contemplated at the beginning of these Chapter 11 Cases.
9	Full budget in Excel, inclusive of schedules detailing each row's forecast methodology, assumptions, and underlying detail.	Partially received. The Debtors provided a copy of the publicly filed budget in Excel, but the Debtors have not produced an Excel model that included schedules outlining the underlying details in their assumptions and forecast methodologies.

**JURISDICTION**

16. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

17. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

18. The statutory and rule predicates for the relief requested herein are sections 105(a) and 1103 of the Bankruptcy Code and Bankruptcy Rule 2004.

**RELIEF REQUESTED**

19. Pursuant to Bankruptcy Rule 2004, the Committee seeks entry of an order, substantially in the proposed form attached hereto as **Exhibit A**, authorizing it to issue Subpoenas (as defined therein) to the Debtors and certain of the Debtors' directors, officers, key employees, and advisors, seeking the examination of witnesses and production of documents. To the extent that the Debtors believe certain documents have been previously produced to the Committee on an informal basis, they need not be produced a second time. In addition, the Committee seeks authority to supplement the Motion with additional motions under Rule 2004 as filed as needed on an *ex parte* basis.

20. Accordingly, the Committee seeks permission to issue subpoenas seeking documents and deposition testimony concerning, among other things, the topics detailed in **Exhibit B**<sup>1</sup> attached herein:

- **Request No. 1:** All documents and communications evidencing or concerning any analysis, opinion, view, determination, commentary, or assessment of the purchase, sale or transfer of any inventory by any of the Debtors or a non-Debtor Affiliate.
- **Request No. 2:** All documents and communications evidencing or concerning any distributions or transfers made by any of the Debtors to (i) any of the Debtors' D&Os; (ii) holders of preferred equity; and/or (iii) holders of common equity.

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<sup>1</sup> Capitalized terms not defined in this paragraph shall have the meanings ascribed to them in Exhibit B.

- **Request No. 3**: All documents and communications evidencing or concerning the Debtors' insurance policies, including any directors and officers (D&O) liability insurance policies.
- **Request No. 4**: All documents and communications evidencing or concerning any Intercompany Transactions or Intercompany Agreements, including but not limited to the transfers between any Debtor and any non-Debtor Affiliate.
- **Request No. 5**: All documents and communications received, sent, or prepared by any of the Debtors' D&Os or the Independent Director, evidencing or concerning: (i) the Debtors' prepetition conduct and activities, (ii) the prepetition conduct of the Debtors' D&Os, and (iii) any potential estate claims and causes of action against the Debtors' D&Os, including all documents and communications produced to the Independent Director or his representatives as part of any investigation.
- **Request No. 6**: All documents and communications evidencing or concerning the Debtors' history of cash payments, cash receipts, and cash disbursements, by entity, with counterparty identified.
- **Request No. 7**: All documents and communications evidencing or concerning financial records, internal accounting records, and other related information (in Excel format, where applicable) of the Debtors and any non-Debtor Affiliate, including but not limited to trial balances, audited financial statements, inventory ledgers, and receivables and payables aging.
- **Request No. 8**: All documents and communications evidencing or concerning the Debtors' financing facilities entered into with SellersFunding and CoVenture, including but not limited to any pledge, charge or other security agreements or

instruments through which a Debtor's equity interest in an affiliate (including any non-Debtor Affiliate) may be pledged, charged or otherwise secured in connection with a financing facility. For the avoidance of doubt, "financing facility" includes, without limitation, any overdraft, guarantee, bonding, documentary or stand-by letter of credit facility, any derivatives or foreign exchange facility and any other form of financial accommodation.

- **Request No. 9:** All documents and communications evidencing or concerning the Debtors' full budget (in Excel format, where applicable), including but not limited to schedules detailing each budget row's forecast methodology, assumptions, and underlying details.
- **Request No. 10:** All documents and communications evidencing or concerning the Debtors' efforts, either prepetition or postpetition, to market any assets for sale.
- **Request No. 11:** All minutes, official or unofficial, of any meeting of the board of directors of any of the Debtors, all notes, memoranda, communications, and other documents relating to or reflecting such meetings, and all materials prepared for or provided to the Debtors' board of directors and/or any committees of the board of directors, whether or not in connection with a meeting.

#### **BASIS FOR RELIEF REQUESTED**

21. Bankruptcy Rule 2004(a) provides that on "motion of any party in interest, the court may order the examination of any entity." The scope of such examination may relate to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to . . . the operation of any business and the desirability of its continuance, the source of any money or property acquired or

to be acquired by the debtor for the purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.” *See* Fed R. Bankr. P. 2004(b).

22. Discovery under Rule 2004 is broader than that available under the Federal Rules of Civil Procedure. *See In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991). “As a general proposition, [Bankruptcy] Rule 2004 examinations are appropriate for revealing the nature and extent of the bankruptcy estate and for ‘discovering assets, examining transactions, and determining whether wrongdoing has occurred.’” *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) (citations omitted). *See also See In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (same). As such, “[Bankruptcy] Rule 2004 examinations are broad and unfettered and in the nature of fishing expeditions.” *Id.*; *see also In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991).

23. “The purpose of a rule 2004 examination is to allow the court to gain a clear picture of the condition and whereabouts of the bankrupt’s estate.” *Keene Corp. v. Johns Manville Corp. (In re Johns-Manville Corp.)*, 42 B.R. 362, 364 (S.D.N.Y. 1984) (citing *Cameron v. United States*, 231 U.S. 710 (1914)).

24. Bankruptcy Code section 1103 expressly authorizes the Committee “to investigate the acts, conduct, assets, liabilities and financial condition of the Debtors.” *In re Recoton Corp.*, 307 B.R. at 755. Thus, the discovery requested in this Motion is “*prima facie* consistent with the Rule’s . . . purposes of allowing the Committee to obtain information necessary to determine whether claims beneficial to the estates exist and whether to pursue such claims.” *See In re Recoton Corp.*, 307 B.R. at 756.

25. Each of these matters for which discovery is sought directly affects the administration of the Debtors' estates and the acts, conduct, property, and financial condition of the Debtors, and thus the Committee's Motion should be granted.

**NOTICE**

26. Notice of this Motion has been provided in accordance with the procedures set forth in the *Order Implementing Certain Notice and Case Management Procedures* entered by this Court on November 2, 2023 [ECF No. 122] (the "Case Management Order") to the parties identified on the Master Service List (as defined in the Case Management Order), including the Standard Parties (as defined in the Case Management Order) and the Rule 2002 Parties (as defined in the Case Management Order). The Committee submits that such notice is sufficient, and no other or further notice need be provided.

**NO PRIOR REQUEST**

27. No prior request for the relief sought in this motion has been made by the Committee to this or any other Court.

**CONCLUSION**

28. **WHEREFORE**, for the reasons set forth in this Motion, the Committee requests that the Court enter an order, substantially in the proposed form attached hereto as **Exhibit A**, granting the relief requested herein and granting the Committee such other and further relief as may be just and proper.

*[Remainder of Page Left Intentionally Blank]*

Dated: November 28, 2023  
New York, New York

Respectfully submitted,

*/s/ Douglas Mannal*

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*Counsel for the Official Committee of Unsecured  
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**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

**ORDER AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO COMPEL EXAMINATION OF WITNESSES AND PRODUCTION OF  
DOCUMENTS BY THE DEBTORS AND OTHER PARTIES PURSUANT TO FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 2004**

Upon consideration of the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Federal Rule of Bankruptcy Procedure 2004 Authorizing the Examination of Witnesses and Production of Documents* (the “Motion”);<sup>2</sup> and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Motion was reasonable and sufficient under the circumstances, and it appearing that there is good cause to grant the relief requested therein; it is HEREBY ORDERED that:

1. Notice of the Motion as provided for therein is sufficient and further notice is waived pursuant to Fed. R. Bankr. P. 9006.

<sup>1</sup> The last four digits of Benitago Inc.’s tax identification number are 4084. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/benitago>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Motion is granted, as set forth herein.

3. The Committee is authorized pursuant to Fed. R. Bankr. P. 9006 to issue subpoenas (“Document Subpoenas”) to the Debtors and the Debtors’ D&Os (as the terms are respectively defined in Exhibit B to this Motion) to produce documents within their possession, custody or control that are responsive to the requests substantially in the form of Exhibit B to the Motion.

4. The Committee is also authorized pursuant to Fed. R. Bankr. P. 9006 to issue subpoenas (“Deposition Subpoenas,” and together with the Document Subpoenas, the “Rule 2004 Subpoenas”) for oral examination to the Debtors and the Debtors’ D&Os (as the terms are respectively defined in Exhibit B to this Motion). The topics for oral examination are substantially as set forth in the “Document Requests” section of Exhibit B to the Motion.

5. Service of the Rule 2004 Subpoenas, by regular mail, on counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn: Kyle J. Ortiz, Esq. (kortiz@teamtogut.com) and Bryan M. Kotliar, Esq. (Bkotliar@teamtogut.com); with a copy to counsel for Acrux Debtors, Klestadt Winters Jureller Southard & Stevens, 200 West 41st Street, 17th Floor, New York, NY 10036, Attn: Fred Stevens, Esq. (FStevens@Klestadt.com) and Sean Southard, Esq. (SSouthard@Klestadt.com); and with a copy to the Office of the United States Trustee for Region 2, U.S. Federal Office Building, One Bowling Green, Suite 534, New York, NY 10004, Attn: Richard Morrissey, Esq. (Richard.Morrissey@usdoj.gov) and Annie Wells, Esq. (Annie.Wells@usdoj.gov), shall constitute sufficient service under Fed. R. C. P. 45, as it is incorporated in Bankruptcy Rule 9016.

6. Pursuant to Rule 9006, the deadline for providing written responses and objections to each Rule 2004 Subpoena shall be seven (7) calendar days of service.

7. The recipient of each Rule 2004 Subpoena shall substantially complete their production of documents (including electronically stored information) in its possession, custody or control referenced in the Rule 2004 Subpoena no later than ten (10) calendar days from the date of service, with said production to be delivered to the Committee's counsel at Dechert LLP.

8. The production and examination required hereby are subject to all applicable privileges; provided that if production of a document required to be produced hereby is withheld on the basis of an asserted privilege, the recipient of each Rule 2004 Subpoena shall provide a proper privilege log to the Committee's counsel at Dechert LLP at the time of document production hereunder.

9. The Committee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order, and all disputes concerning Rule 2004 Subpoenas, including objections thereto, that are not resolved by agreement of the parties may be raised only by letter brief to the Court not exceeding five pages, single-spaced. The other party shall file a responsive letter brief within three business days, not exceeding five pages, single-spaced. Copies of such letter briefs shall also be emailed to the Court's chambers.

11. The Committee's rights are reserved to request additional examinations or documents under Rule 2004 based on any information that may be revealed by the discovery obtained pursuant to this Order or otherwise.

Dated: \_\_\_\_\_, 2023  
New York, New York

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

## **EXHIBIT B**

The definitions and instructions set forth below apply to each of the requests for production of documents.

### **DEFINITIONS**

1. The terms “all” and “any” shall include any and all.
2. The terms “and” as well as “or” shall be construed conjunctively or disjunctively, the singular shall be deemed to include the plural and vice-versa, and the present tense shall be deemed to include the past tense and vice-versa, as necessary to bring within the scope all information that might otherwise be construed to be outside their scope.
3. A reference to a corporation, partnership, proprietorship, association, organization, or any other business or legal entity includes the entity’s affiliates, subsidiaries, predecessors, successors, or assigns.
4. The term “affiliate” shall have the meaning ascribed to such term in section 101(2) of the Bankruptcy Code.
5. The term “Bankruptcy Cases” shall mean the above-captioned chapter 11 cases filed by the Debtors that are jointly administered under case number 23-11394 (SHL), currently pending in the Bankruptcy Court.
6. The term “Bankruptcy Code” shall mean 11 U.S.C. §§ 101-1532, as amended and applicable to the Bankruptcy Cases.
7. The term “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York.
8. The term “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure.

9. The term “Committee” shall mean the official committee of unsecured creditors appointed by the U.S. Trustee on September 15, 2023, consisting of the members of the Committee as well as the members’ representatives and agents.
10. The term “communications” shall include (without limitation) any transmittal and/or receipt of information (in the form of facts, ideas, inquiries or otherwise), whether oral or written and whether chance, prearranged, formal or informal, and specifically includes conversations in person, telephone conversations, e-mail (including instant messages and text messages), voicemail, letters, memoranda, statements, media releases, press conferences, magazines and newspaper articles, testimony before a governmental body, and video and audio transmissions. For the avoidance of doubt, the term “communications” shall include any and all electronic messages and/or conversations using text messaging and mobile device chat services, including but not limited to Instant Bloomberg, Bloomberg messages, BlackBerry Messenger, Google Hangouts, Apple iMessage, Facebook Messenger, WhatsApp, KakaoTalk, Line, Signal, Slack, WeChat and Snapchat.
11. The term “concerning” shall mean relating to, referring to, describing, evidencing or constituting.
12. The term “correspondence” shall mean any document that either constitutes a communication between two or more entities, persons, or things, or that records, memorializes, reflects, or otherwise summarizes the substance of such a communication, whether made directly or otherwise.
13. The term “CoVenture” shall mean CoVenture – Bento Credit Opportunities GP, LLC and CoVenture – Bento Credit Opportunities SPV, LP.

14. The term “Debtors” shall mean:

- a. Benitago Inc.
- b. Acrux LLC
- c. Aludra Limited
- d. Algedi LLC
- e. Biham LLC
- f. Canopus LLC
- g. Denebola LLC
- h. Errai LLC
- i. Felis LLC
- j. Ginan LLC
- k. Hamal LLC
- l. Izar LLC
- m. Jabbah LLC
- n. Kamuy LLC
- o. Lich LLC
- p. Maasym LLC
- q. Nusakan LLC
- r. Okab LLC
- s. Phact LLC
- t. Chechia LLC
- u. Dalim LLC
- v. Segin LLC
- w. Taiyi LLC
- x. Veritate LLC
- y. Wazn LLC
- z. Yildun LLC
- aa. Bharani LLC
- bb. Revati LLC
- cc. Alhena LLC

15. The term “Debtors’ D&Os” shall include, with respect to a Debtor, any person who currently serves or has formerly served as a director, officer, member, manager, and/or key employee of the entity. For the avoidance of doubt, the Debtors’ D&Os shall include, without limitation: (i) Benedict Dohmen, (ii) Santiago Nestares Lampo, (iii) Woosung Chun, and (iv) Tom Studebaker.
16. The term “document” is defined in the broadest sense permitted by Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rules 7034 and 9014, and shall include (without limitation) any and all drafts, communications, correspondences, memoranda, records, reports, books, reports, and/or summaries of personal conversations or interviews, diaries, graphs, charts, diagrams, tables, photographs, recordings, tapes, microfilms, minutes, reports, and/or summaries of meetings or conferences, press releases, stenographic, handwritten, or any other notes, work papers, checks, front and back, check vouchers, check stubs or receipts, tape data sheets, or data processing cards or discs or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, telephone records, and any paper or writing of whatever description, including any information contained in any computer although not yet printed out, which documents are in your possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.
17. The term “entity” shall have the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.
18. The term “evidencing” shall mean tending to show, in whole or in part, in any probative manner, the existence or nonexistence of any matter.

19. The term “Independent Director” shall mean D.J. (Jan) Baker.
20. The term “Intercompany Transaction” shall mean any financial or commercial transaction executed between the Debtors, or between any of the Debtors with a non-Debtor Affiliate.
21. The term “Intercompany Agreement” shall mean any written or consensual agreement executed between the Debtors, or between any of the Debtors with a non-Debtor Affiliate.
22. The term “non-Debtor Affiliate” shall mean, with respect to an entity, any person or entity controlling, controlled by, or under common control by Benitago Inc., which is not a Debtor in the Bankruptcy Cases. For the avoidance of doubt, Benitago Ltd. is a non-Debtor Affiliate.
23. The term “payment” shall mean any payments, equity contributions, dividends, and any other kind of distribution.
24. The term “person” shall mean (without limitation) any natural person, firm, sole proprietorship, partnership, corporation, association, trust, governmental body, agency, or other entity.
25. The term “SellersFunding” shall mean SellersFunding International Portfolio Ltd.

### **INSTRUCTIONS**

1. Produce all documents responsive to these requests as they are kept in the regular course of business. Produce electronically stored information in a searchable .pdf or .tif format with all metadata. Produce databases, spreadsheets or other electronically stored information that is not readily usable when converted to .pdf or .tif format, in native format or another format agreed upon by the parties.

2. These requests require the Debtors to produce all documents in the Debtors' possession, custody, or control, within the broadest meaning of that phrase permitted by the Federal Rules of Civil Procedure and the Bankruptcy Rules, including documents in the possession, custody, or control of the Debtors' agents, representatives, experts, attorneys (to the extent not covered by the attorney client privilege or work product doctrine, and to the extent covered, such documents should be specified on a privilege log as noted below), accountants, financial advisors, or any other person acting on the Debtors' behalf or under the Debtors' direction or control.
3. If any requested documents were at one time in existence but are no longer in existence, please so state, and identify: (a) the type of document; (b) the type of information contained therein; (c) the date(s) on which it was created; (d) the author and recipients, including any indicated or blind copies; (e) the date on which it ceased to exist; (f) the circumstances under which it ceased to exist; and (g) the identity of all persons having knowledge of the contents of such documents.
4. In the event that any requested document, or any portion thereof, is withheld from production upon a claim of privilege, work product, or other protection from disclosure, provide a privilege log in accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.
5. If, in answering any of the requests, any ambiguity in construing either the request or a definition or instruction relevant to the request is encountered, identify the matter deemed ambiguous and set forth the construction chosen or used in responding to the request.

6. All words, terms and phrases not specifically defined in these requests are to be given their normal and customary meaning in the context in which they are used in these requests.
7. All documents previously produced to the Committee on an informal basis should not be produced a second time.
8. All requests for “documents” and/or “communications” refer to both internal and external documents.
9. The relevant time period for each request is **January 1, 2020 through November 28, 2023**, unless otherwise specifically indicated.

### **DOCUMENT REQUESTS**

#### **Request No. 1**

All documents and communications evidencing or concerning any analysis, opinion, view, determination, commentary, or assessment of the purchase, sale or transfer of any inventory by any of the Debtors or a non-Debtor Affiliate.

#### **Request No. 2**

All documents and communications evidencing or concerning any distributions or transfers made by any of the Debtors to (i) any of the Debtors’ D&Os; (ii) holders of preferred equity; and/or (iii) holders of common equity.

#### **Request No. 3**

All documents and communications evidencing or concerning the Debtors’ insurance policies, including any directors and officers (D&O) liability insurance policies.

**Request No. 4**

All documents and communications evidencing or concerning any Intercompany Transactions or Intercompany Agreements, including but not limited to the transfers between any Debtor and any non-Debtor Affiliate.

**Request No. 5**

All documents and communications received, sent, or prepared by any of the Debtors' D&Os or the Independent Director, evidencing or concerning: (i) the Debtors' prepetition conduct and activities, (ii) the prepetition conduct of the Debtors' D&Os, and (iii) any potential estate claims and causes of action against the Debtors' D&Os, including all documents and communications produced to the Independent Director or his representatives as part of any investigation.

**Request No. 6**

All documents and communications evidencing or concerning the Debtors' history of cash payments, cash receipts, and cash disbursements, by entity, with counterparty identified.

**Request No. 7**

All documents and communications evidencing or concerning financial records, internal accounting records, and other related information (in Excel format, where applicable) of the Debtors and any non-Debtor Affiliate, including but not limited to trial balances, audited financial statements, inventory ledgers, and receivables and payables aging.

**Request No. 8**

All documents and communications evidencing or concerning the Debtors' financing facilities entered into with SellersFunding and CoVenture, including but not limited to any pledge, charge or other security agreements or instruments through which a Debtor's equity interest in an affiliate (including any non-Debtor Affiliate) may be pledged, charged or otherwise secured in connection with a financing facility. For the avoidance of doubt, "financing facility" includes, without limitation, any overdraft, guarantee, bonding, documentary or stand-by letter of credit facility, any derivatives or foreign exchange facility and any other form of financial accommodation.

**Request No. 9**

All documents and communications evidencing or concerning the Debtors' full budget (in Excel format, where applicable), including but not limited to schedules detailing each budget row's forecast methodology, assumptions, and underlying details.

**Request No. 10**

All documents and communications evidencing or concerning the Debtors' efforts, either prepetition or postpetition, to market any assets for sale.

**Request No. 11**

All minutes, official or unofficial, of any meeting of the board of directors of any of the Debtors, all notes, memoranda, communications, and other documents relating to or reflecting such

meetings, and all materials prepared for or provided to the Debtors' board of directors and/or any committees of the board of directors, whether or not in connection with a meeting.