

**KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP**

Tracy L. Klestadt
John E. Jureller, Jr.
Christopher Reilly
200 West 41st Street, 17th Floor
New York, New York 10036
(212) 972-3000

*Conflicts Counsel for China Fishery
Group Limited (Cayman) and Its Affiliated Debtors*

**Hearing Date:
October 27, 2021 at 11:00 a.m.**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	
	:	Chapter 11
	:	
CHINA FISHERY GROUP LIMITED	:	Case No. 16-11895 (JLG)
(CAYMAN), et al.,	:	
	:	(Jointly Administered)
Debtors.¹	:	

In re:	:	
	:	Chapter 11
	:	
PACIFIC ANDES ENTERPRISES	:	Case No. 21-11588 (JLG)
(HONG KONG) LTD.	:	
	:	(Jointly Administered)
Debtor.	:	

**OBJECTION OF DEBTOR PACIFIC ANDES ENTERPRISES (HONG KONG) LTD. TO
THE MOTION OF THE HONG KONG PLAINTIFFS FOR ENTRY OF AN ORDER
DISMISSING AND ABSTAINING FROM THE CHAPTER 11 CASE**

¹ The Debtors in these chapter 11 cases are as follows: China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGI (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Limited (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd. (BVI), Golden Target Pacific Limited (BVI), Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited (BVI), Admired Agents Limited (BVI), Chiksano Management Limited (BVI), Clamford Holding Limited (BVI), Excel Concept Limited (BVI), Gain Star Management Limited (BVI), Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited (BVI), Loyal Mark Holdings Limited (BVI), Metro Island International Limited (BVI), Mission Excel International Limited (BVI), Natprop Investments Limited, Pioneer Logistics Limited (BVI), Sea Capital International Limited (BVI), Shine Bright Management Limited (BVI), Superb Choice International Limited (BVI), Toyama Holdings Limited (BVI) and Pacific Andes Enterprises (Hong Kong) Limited.

Table of Contents

1. PRELIMINARY STATEMENT1

2. BACKGROUND4

 A. The Debtors’ Bankruptcy Cases..... 4

 B. PAE HK Bankruptcy Case 5

 C. Appointment of Trustee and Confirmation of CFG Peru Plan..... 6

 D. *The Debtors’ Plans*..... 7

 E. The PAIH Motion..... 7

 F. The Liquidation Companies Claims..... 10

3. ARGUMENT12

 a. “Cause” has not been shown to merit dismissal under Section 1112(b) of the
Bankruptcy Code..... 13

 b. Dismissal of or Abstention from the Chapter 11 Case Pursuant to Section 305 of the
Bankruptcy Code is Not Appropriate Under the Circumstances. 17

 c. Dismissal pursuant to 109(a) is not Appropriate as PAE HK Has Basis for Filing Its
Chapter 11 Case 19

4. CONCLUSION.....21

Table of Authorities

Cases

C-TC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship), 113 F.3d 1304, (2d Cir. 1997)	16
.....	16
In re Aerovias Nacionales de Colombia S.A., 303 B.R. 1, 9–10 (Bankr. S.D.N.Y. 2003).....	19
In re BH S&B Holdings, LLC, 439 B.R. 342, (Bankr. S.D.N.Y. 2010).....	16
In re BH S&B Holdings, LLC, 439 B.R. at 346	18
In re General Growth Properties, Inc., 409 B.R. 43, (Bankr. S.D.N.Y. 2009)	15, 16
In re Global Ocean Carriers, Ltd. 251 B.R. 31 (Bankr. D. Del. 2000).....	19
In re Iglesias, 226 B.R. 721,722-23 (Bankr. S.D.N.Y. 1998).....	20
In re Monitor Single Lift I, Ltd., 381 B.R. 455, (Bankr. S.D.N.Y. 2008)	20
In re Photo Promotion Associates, Inc., 47 B.R. 454 (Bankr. S.D.N.Y. 1985)	16
In re RCM Global Long Term Capital Appreciation Fund, Ltd., 200 B.R. 514, (Bankr. S.D.N.Y. 1996).....	19, 20
In re Ridgely Commc'ns, Inc., 107 B.R. 72, (Bankr. D. Md. 1989)	21
In re Rubin Family Irrevocable Stock Trust, No. 13-72193, 2013 WL 6155606, *10 (Bankr. D.N.J. June 11, 2015)	16
In re Rubin, 2013 WL 6155606 at *12; In re Trina Assocs., 128 B.R. 858, (Bankr. E.D.N.Y. 1991).....	18
In re Sletteland, 260 B.R. 657, (Bankr. S.D.N.Y. 2001)	18
In re Yukos Oil Co., 320 B.R. 130, 132 (Bankr. S.D. Tex. 2004).....	19

Statutes

11 U.S.C. § 1112(b)(2)	18, 19
------------------------------	--------

11 U.S.C. § 305(a)(1)..... 19

11 U.S.C. §§ 1112(b)(1) 15

Pacific Andes Enterprises (Hong Kong) Ltd. (“PAE HK”), as debtor and debtor in possession, hereby submits its objection (the “Objection”) to the *Motion of the Hong Kong Plaintiffs for Entry of an Order Dismissing and Abstaining from the Chapter 11 Case of Pacific Andes Enterprises (Hong Kong) Limited* (the “Motion”) [ECF Dkt #2] filed by Pacific Andes Enterprises (BVI) Limited (in liquidation), Solar Fish Trading Limited (in liquidation), Richtown Development Limited (in liquidation), Parkmond Group Limited (in liquidation), Europaco Limited (in liquidation), Palanga Limited (in liquidation), and Zolotaya Orda Limited (in liquidation) (collectively, the “Hong Kong Plaintiffs” or the “Liquidation Companies”)². In support of the Objection, PAE HK respectfully represents as follows:

1. PRELIMINARY STATEMENT

1. On September 27, 2021, the Debtors, ***inclusive of PAE HK***, filed their *Disclosure Statement for First Amended Joint Chapter 11 Plan of Reorganization of Pacific Andes International Holdings Limited (Bermuda) and Certain of its Affiliated Debtors* (“PAIH Disclosure Statement”) [ECF Dkt. #2685], along with the *First Amended Joint Chapter 11 Plan of Reorganization of Pacific Andes International Holdings Limited (Bermuda) and Certain of its Affiliated Debtors* (“PAIH Plan”) [ECF Dkt. # 2685-1]. As set forth in the PAIH Disclosure Statement and PAIH Plan, the Debtors intend to confirm a plan of reorganization which will result in a distribution to creditors of the PAIH Group Debtors³ at the PAIH level of the Debtors’ corporate structure.⁴ The PAIH Plan is based, in material part, upon the sale of the Debtors’

²All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

³The “PAIH Group Debtors” include PAIH, Pacific Andes International Holdings (BVI) Limited, Nouvelle Foods International Ltd. (BVI), N.S. Hong Investment (BVI) Limited, Clamford Holding Limited (BVI) and Pacific Andes Enterprises (Hong Kong) Limited.

⁴The “PAIH Group” includes ACE Field Limited (BVI), Aqua Foods (Qingdao) Co Ltd. (PRC), Aqua Management Limited (BVI), Bestmate Investments Limited (Samoa), Bonaire Developments Limited (BVI), Chasterton Group Limited (BVI), China Cold Chain Food Products Trade Development Limited (BVI), Clamford Holding Limited

direct and indirect beneficial ownership interests in certain *non-Debtor* real estate holding companies and certain real property (collectively, the “PAIH Real Property”). One of those real properties is held by and under PAE HK⁵ (the “PAE HK Property”)⁶, and is a material part of the PAIH Plan. The inclusion of the proceeds of the sale of the PAE HK Property into the proposed distribution to creditors of the PAIH Group Debtors is not new. The PAE HK Property was an integral part of the PAIH Motion (defined later herein), which was filed on October 4, 2019 [ECF Dkt. # 1753], in which creditors (the “Participating Creditors”) holding the vast majority of the liquidated claims against the PAIH Group Debtors each agreed to sell and assign their claims to an unrelated third-party investor which would then receive the PAIH Real Property in consideration for the satisfaction of the claims. Despite consensus of the Participating Creditors, which hold more than \$407.7 million in liquidated claims against PAIH Group Debtors, an agreement could not be reached with the Liquidators. The PAIH Motion was ultimately

(BVI), Dynamic Choice Limited (HK), Eurofish Company Limited (BVI), Europaco (AP) Limited (BVI), Europaco (BP) Limited (BVI), Europaco (EP) Limited (BVI), Europaco (GP) Limited (BVI), Europaco (HP) Limited (HK), Europaco (QP) Limited (Samoa), Europaco Limited (BVI), Fastact Group Limited (BVI), Fortune Midas Limited (BVI), Full Enrich Limited (HK), Global Research Group Inc. (BVI), Global Research Services Inc. (BVI), Glorious Ocean Limited (HK), Grandluck Enterprises Limited (BVI), Grandway Capital Resources Limited (HK), Heng Holdings (BVI) Limited (BVI), Join Power Assets Limited (BVI), Kyoshoku Company Limited (Japan), Kyoshoku Marketing Company Limited (Japan), Modern Energy Holdings Limited (BVI), N.S. Hong Investment (BVI) Limited, National Fish & Seafood Inc. (US), National Fish and Seafood Ltd. (HK), National Fish and Seafood Management Ltd. (HK), Nouvelle Foods International Ltd. (BVI), Ocean Kingdom Enterprises Limited (HK), Onn Profits Limited (BVI), Orient Ocean Limited (BVI), PA Capital Investment Limited (BVI), Pacific Andes (EP) Limited (BVI), Pacific Andes (Europe) Limited (BVI), Pacific Andes (HP) Limited (HK), Pacific Andes (Shanghai) Food Trading Company Limited (PRC), Pacific Andes Development Limited (BVI), Pacific Andes Development Sdn Bhd (Malaysia), Pacific Andes Enterprises (Hong Kong) Limited (HK), Pacific Andes Food (BVI) Limited (BVI), Pacific Andes Food Limited (PRC), Pacific Andes International Holdings (BVI) Limited (BVI), PAIH, Pacific Andes Treasury Management Limited (HK), Pacific Fruit Trading Limited (HK), Paco Kappa Limited (BVI), Paco Theta Limited (BVI), Paco Zeta Limited (BVI), Paco-EP Limited (Cyprus), Paco-GP Limited (Cyprus), Paco-HP Limited (Cyprus), Pacos (QP) Limited (Cyprus), Pacos Processing Limited (Cayman), Pacos Processing Limited (Cyprus), PAE Limited (HK), Paramount Holdings Limited (HK), Peaklane Development Limited (BVI), Peakville Limited (UK), Pelican Food Limited (BVI), Poweroute Limited (BVI), Qingdao Canning Foodstuff Co Limited (PRC), Qingdao Pacific Andes International Trading Company Limited (BVI), Qingdao Pacific Andes International Trading Company Limited (PRC), Rawley Trading Limited (BVI), Rich Reward Assets Limited (BVI), Rich System Limited (HK), Sevensseas Enterprises Limited (BVI), Silliker Hong Kong Limited (HK), Trade Ocean Limited (BVI), Value Food Supply Limited (BVI), Value Food Supply Limited (HK), Vision Invest Limited (BVI), Waton Enterprises Limited (HK), Wealthy Nation Holdings Limited (BVI), and Xinxing Foodstuffs (Qingdao) Company Limited (PRC).

⁵PAE HK is an indirect subsidiary of PAIH BVI and PAIH.

⁶The property is located at House No. 34 Manderly Gardens, 48 Manderly Gardens Road, Hong Kong

withdrawn once the CFG Peru Plan (defined later herein) was filed, after which the Debtors filed their own proposed plans to, *inter alia*, effectuate the transactions and agreed distribution thereunder. As such, the argument asserted by the Hong Kong Plaintiffs that the Debtors conspired to file PAE HK solely as a litigation tactic, to benefit the insiders, is directly contradicted by the facts and the procedural history to date, including the Liquidators' and Hong Kong Plaintiffs' involvement therein.

2. Despite being appointed in 2017, at which time they had immediately (and prior to the completion of any investigation) sought to implicate the Debtors and their principals in their alleged fictitious fishing trade fraud claims (albeit without evidence), the Liquidators are only now seeking the Hong Kong Court's authority to add PAE HK as a defendant in the Hong Kong Proceeding which was commenced more than two (2) years ago in 2019. In fact, more than five (5) years after their appointment, the purported claims of the Liquidation Companies remain contingent and unliquidated – both in the U.S. proceedings and the Hong Kong proceedings. Ironically, it was clear from the circumstances that the Hong Kong filing on the part of the Liquidators was itself a litigation tactic, with the objective of blocking the progress of the PAIH Motion before this Court. The Liquidators succeeded in this tactic, with the then-investors in the transactions under the PAIH Motion declining to proceed because of the Liquidators' filings and threats. As of the PAE HK Petition Date, the Hong Kong Court had not held any hearing on this matter, much less issued any decision on the Hong Kong Plaintiffs' application regarding adding PAE HK as a defendant therein, and there is no guarantee such application would be granted at such a late date. Nonetheless, these *contingent, unliquidated and disputed* claims that the Hong Kong Plaintiffs apparently seek to assert against PAE HK are exactly the same *contingent, unliquidated and disputed* claims asserted in at least two hundred

(200) proofs of claims filed by the Liquidators, on behalf of the Liquidation Companies, in these Bankruptcy Cases before this Court. The Debtors' plans provide final resolution of these claims.

3. The Motion lacks any merit. The filing of PAE HK's Bankruptcy Case was justified, in the interests of the Debtors' estates (as evidenced by, among other things, the PAIH Plan), and proper. PAE HK has adequate connections to this Court, including as an affiliated entity of the thirty-seven (37) other Debtors in these Bankruptcy Cases. The PAE HK Property has long been earmarked for sale and distribution to creditors in this Court, the creditors are expecting to receive the proceeds of this sale, and the bankruptcy filing protects these assets for same.

4. Now that the CFG Peru Plan has been confirmed, the Debtors, including PAE HK, have positioned themselves to effectuate their own plans for the benefit of their estates. The proposed plans will fully liquidate the Debtors' remaining assets for the benefit of the creditors as a whole and finally resolve these long-standing cases. It is respectfully requested that the Motion be denied in all respects.

2. BACKGROUND

A. The Debtors' Bankruptcy Cases

5. On June 30, 2016, each of the Debtors, except Pacific Andes Resources Development Ltd. ("PARD"), Nouvelle Foods International Ltd. ("Nouvelle"), Golden Target Pacific Limited ("Golden Target"), Pacific Andes International Holdings (BVI) Limited ("PAIH (BVI)"), Zhonggang Fisheries Limited ("Zhonggang"), the Additional Debtors (defined below) and PAE HK, (the "Initial Debtors") filed voluntary petitions under the Bankruptcy Code in this Court.

6. On September 29, 2016, PARD filed its Chapter 11 bankruptcy case. On March 27, 2017, Nouvelle and Golden Target filed Chapter 11 bankruptcy cases. On April 17, 2017, PAIH (BVI) and Zhonggang filed Chapter 11 bankruptcy cases. On May 2, 2017, an additional sixteen (16) Debtors filed Chapter 11 bankruptcy cases (collectively, the “Additional Debtors”)⁷.

7. On September 8, 2021 (the “Petition Date”), PAE HK filed its Chapter 11 bankruptcy case (the “PAE HK Chapter 11 Case” and collectively, with PARD, Nouvelle, Golden Target, PAIH (BVI), Zhonggang, and the other Debtors’ Chapter 11 cases, the “Chapter 11 Cases”).

B. PAE HK Bankruptcy Case

8. On September 15, 2021, PAE HK file its Notice pursuant to the Bankruptcy Court’s *Order Pursuant to 11 U.S.C. § 105(a) Directing Certain Orders in the Chapter 11 Cases of China Fishery Group Limited (Cayman), et al. Be Made Applicable to Subsequent Debtors* (the “New Debtor Order”) [See Case No. 17-10733, ECF No. 12; Case No. 17-10734, ECF No. 12]. Pursuant to the New Debtor Order, the PAE HK Bankruptcy Case shall be consolidated for procedural purposes only and shall be jointly administered by the Bankruptcy Court under Case No. 16-11895. As set forth in the Notice, PAE HK incorporates by reference the First Day Declaration (as defined in the New Debtor Order).

9. Further, pursuant to the New Debtor Order, all generally applicable orders currently pending in the Debtors’ Chapter 11 Cases and the following orders entered in the Debtors’ Chapter 11 Cases shall be made applicable to PAE HK and the PAE HK Bankruptcy Case:

⁷ The Additional Debtors are: Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, and Toyama Holdings Limited (BVI).

ECF No.	Order
26	Order Enforcing Sections 362, 365 and 525 of The Bankruptcy Code
27	Order Granting Motion for Joint Administration
30	Order Extending the Debtors' Time to File Schedules and Statements and Granting Additional Time to File 2015.3 Report
88	Order Authorizing Retention and Employment of RSR Consulting, LLC as Restructuring Consultant for Debtors and Debtors in Possession effective <i>Nunc Pro Tunc</i> to Petition Date
93	Order Authorizing the Debtors to (A) Continue their Cash Management System, (B) Honor certain prepetition obligations related thereto, and (C) Maintain existing Bank Accounts
199	Order Establishing procedures for Monthly Compensation and Reimbursement of Expenses of Professionals
295	Order Implementing Procedures to Retain, Compensate and Reimburse Professionals Utilized in the Ordinary Course of Business
492	Order Granting Application to Employ Weil, Gotshal & Manges LLP as Attorneys for Certain Debtors
501	Order Granting Application to Employ Klestadt Winters Jureller Southard & Stevens, LLP as Conflicts Counsel to the Debtors
2282	Order Granting Application to Employ Duff & Phelps a/k/a Kroll, LLC as Financial Advisor to the Debtors
2569	Order Confirming Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)

10. PAE HK is operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

C. Appointment of Trustee and Confirmation of CFG Peru Plan

11. By Order dated November 10, 2016, the Court appointed William A. Brandt, Jr. (the "Chapter 11 Trustee") as chapter 11 trustee for CFG Peru Investments Pte Limited (Singapore) ("CFG Peru"). [ECF No. 219].

12. No trustee, examiner, or statutory committee of creditors has been appointed in any of the Chapter 11 Cases, except as discussed above.

13. On March 16, 2021, the Creditor Plan Proponents, pursuant to that certain Restructuring Support Agreement, filed their plan of reorganization and disclosure statement with respect to CFG Peru.

14. On June 10, 2021, the Bankruptcy Court entered an Order, which, *inter alia*, confirmed the Creditor Plan Proponents' plan of reorganization for CFG Peru (the "CFG Peru Plan"). [ECF Dkt. # 2569].

D. The Debtors' Plans

15. On September 27, 2021, the *First Amended Joint Chapter 11 Plan of Reorganization of Pacific Andes International Holdings Limited (Bermuda) and Certain of its Affiliated Debtors* (the "PAIH Plan") was filed. [ECF Dkt. # 2685]. ***PAE HK is a Plan Debtor under the PAIH Plan.*** On the same date, the *First Amended Joint Chapter 11 Plan of Reorganization of China Fishery Group Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda) and Certain of their Affiliated Debtors* (the "CFGL-PARD Plan") was filed. [ECF Dkt. # 2684]. The PAIH Plan provides for the sale of assets and a material distribution to creditors of the estates. The proposed transactions set forth in the PAIH Plan were based upon significant arms-length negotiations with the creditors of the PAIH Group Debtors over a more than two year period, and involve largely assets held by non-Debtor affiliates of PAIH.

E. The PAIH Motion

16. On October 4, 2019, the Debtors filed the *Motion of Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited Pursuant to Bankruptcy Code Sections 105, 363 and 502, and Bankruptcy Rules 2002, 3001(e), 3007, 4001, 6004, 9014 and 9019, (I) to Approve Compromise amount Movants, Certain Creditors and*

Investors, (II) to Authorize Certain Corporate Governance Actions in Furtherance of Compromise, (III) to Approve the Compromise and Allowance of Certain Claims Related to the Proposed Transaction, and (IV) to Grant Related Relief. (the “PAIH Motion”). [Docket No. 1753]. Subsequently, on February 12, 2021, the Debtors filed their *First Supplement to the Motion of Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited Pursuant to Bankruptcy Code Sections 105, 363 and 502, and Bankruptcy Rules 2002, 3001(e), 3007, 4001, 6004, 9014 and 9019, (I) to Approve Compromise amount Movants, Certain Creditors and Investors, (II) to Authorize Certain Corporate Governance Actions in Furtherance of Compromise, (III) to Approve the Compromise and Allowance of Certain Claims Related to the Proposed Transaction, and (IV) to Grant Related Relief* (the “First Supplemental PAIH Motion”) [ECF Dkt. # 2341].

17. By the PAIH Motion and First Supplemental PAIH Motion, the Debtors sought approval of a proposed transaction, wherein in the Participating Creditors holding the majority of the liquidated claims against the PAIH Group Debtors each agreed to sell and assign their claims to an unrelated independent third-party investor (the “Original PAIH Investor”) which would then receive the Interests in the Property Owning Companies in consideration for the satisfaction of the claims. The proposed transaction involved six parcels of real property⁸, including the PAE HK Property.

18. The proposed transaction would have resulted in the satisfaction of the majority of the PAIH Group Debtors’ indebtedness, in an aggregate amount of approximately \$407.7 million, in consideration for these real property interests held by non-Debtor affiliates. Each of the Participating Creditors agreed to the proposed transaction, including the valuation of the real property, the proposed “purchase price”, and the set distributions thereunder for the sale and

⁸The PAIH Real Properties under the PAIH Plan contains an additional parcel of property located in Japan.

assignment of the claims (which were keyed off the proposed “purchase price”). Many of these Participating Creditors are the same creditors of the Liquidation Companies and involve the same claims (i.e. claims related to underlying credit facilities and loans to the Pacific Andes Group). For purposes of the PAIH Motion and in an effort to move these cases towards resolution, certain of the Liquidation Companies were to receive the same percentage distribution on account of certain of their claims.

19. The Liquidators were actively involved in the negotiations of the proposed transaction since at least 2019, and they were aware of the Debtors’ intention to sell the PAE HK Property thereunder. Despite consensus of the Participating Creditors, an agreement could not be reached with the Liquidators.

20. On February 22, 2021, counsel for the Liquidators copied counsel for the Original PAIH Investor on a letter (the “Liquidator Letter”) threatening that, should the Debtors proceed with the PAIH Motion before this Court, the Liquidators intended to proceed against PAE HK in the Hong Kong Court, “*regardless of whether [the PAIH Motion] is approved in the US Court*”. A copy of the Liquidator Letter is annexed to the Declaration of John E. Jureller, Jr. in Opposition to the Motion (“Jureller Declaration”). As was intended by their actions, this tactic resulted in the Original PAIH Investor, after more than two years of working through the complexities of the proposed transaction, advising the Debtors that they would no longer proceed with the transaction, much to the chagrin of the creditors.

21. The PAIH Motion was ultimately withdrawn once the CFG Peru Plan was filed, and the Debtors filed their proposed plans to, *inter alia*, effectuate the currently pending transactions and agreed distributions thereunder. After significant efforts, the PAIH Plan now provides for similar transactions and outcome for the creditors as the prior PAIH Motion and its

proposed transactions thereunder, albeit with a new independent investor purchasing the PAIH Real Properties.

F. The Liquidation Companies Claims

22. The Motion is the latest effort by the Liquidators of the Hong Kong Plaintiffs in their long running attempt to disrupt the reorganization efforts of the Debtors and extract a pound of flesh from the Pacific Andes Group and its beneficial owners.

23. As a means of securing their control over these entities and proceeding with their claims, the Liquidators sought and were appointed as the joint official liquidators of the Liquidation Companies based upon their representations to the applicable foreign courts that each of the Liquidation Companies were affiliated with or connected to the Debtors.

24. The claims asserted against PAE HK by the Hong Kong Plaintiffs are familiar to this Court, and are based upon the unfounded allegations made by the Liquidators that the Debtors, by their principals and affiliated non-Debtor entities, perpetrated a “multibillion dollar trade finance fraud.” Yet despite being alleged by these same Liquidators since 2015, these claims remain *contingent, unliquidated and disputed*. Despite significant evidence to the contrary, the Liquidators continue to claim that **NO** fish were bought or sold by the Debtors. Essentially the Liquidators allege that the Debtors defrauded several of the largest banks in Asia by circulating the trade finance funds through various entities (including, most notably, their own Liquidation Companies) in an elaborate fraudulent fictitious fish trading scheme to, among other things, create the appearance of false revenue, profits and assets. The only fiction is the claim itself.

25. The Liquidators’ claims purportedly alleged that US\$42,647,000 was transferred to PAE HK in the period from November 25, 2010 to November 26, 2014 from Parkmond Group

Limited. What the claims avoid is the fact that, at the time, PAE HK was the treasure company to serve Parkmond Group Limited, amongst others, and received the management fee income from Parkmond Group Limited and/or any surplus cash in Parkmond Group Limited as a matter of the ordinary course of the group's business. There is no evidence that any of those funds are traceable to any trade finance fraud.

26. As set forth in the Debtors' Notice to the Bankruptcy Court dated November 8, 2019 [ECF Dkt. No. 1818], these same claims were investigated by the regulatory agencies in both Hong Kong and Singapore. On August 18, 2015, Debtor PAIH received notice from the Hong Kong Securities and Futures Commission (the "HKSFC") demanding the production of certain records and documents in connection with an investigation. Also on August 18, 2015, CFGL and PARD received separate notices from the Secondary Markets Conduct and Enforcement Division, Market Conduct Department, Monetary Authority of Singapore ("MAS") and the Singapore Commercial Affairs Department ("CAD") informing them that MAS and CAD were investigating the possibility of an offense under the Singapore Securities and Futures Act Cap 289 and that the investigation required CFGL and PARD to provide MAS and CAD with certain information and documentation (collectively with the investigation conducted by the HKSFC, the "Regulatory Investigations").

27. On August 20, 2015, PAIH, PARD, and CFGL, in compliance with their respective listing obligations, each made public announcements regarding the Regulatory Investigations to their respective stock exchanges. The Regulatory Investigations were largely responsible for the Pacific Andes Group's deteriorating financial condition because certain suppliers and customers have been unwilling to transact with entities in the Pacific Andes Group or have demanded less favorable terms since learning of the Regulatory Investigations.

28. Each of the investigations have now been concluded with no action being taken by the regulators. On November 1, 2018, the Securities and Futures Commission of Hong Kong wrote to PAIH advising that its investigation had concluded with no action being taken. More recently, PARD and CFGL have been advised that the investigation by MAS and CAD in Singapore has been concluded with no further action being taken.

29. Nevertheless, the Liquidators, on behalf of the Liquidation Companies, have still asserted more than two hundred (200) of the same claims against the Debtors in these cases. Same claim, same facts, same legal basis. The proofs of claims are purportedly based upon five Hong Kong legal principles. These claims mirror those asserted in the Hong Kong Proceedings.

30. The Liquidation Companies' Claims remain *contingent, unliquidated and disputed and unproven*. These claims have only been fully examined by a court on one occasion. In January 2016, the High Court of Hong Kong dismissed forthwith the joint provisional liquidators who had been appointed *ex parte* on the basis of these claims, unconvinced as to the veracity of the claims.

3. ARGUMENT

31. By the Motion, the Hong Kong Plaintiffs seek an order (A) dismissing PAE HK's Chapter 11 Case pursuant to Section 1112(b) of the Bankruptcy Code for "cause" because the Petition was a "bad faith" filing; (B) dismissing and abstaining from PAE HK's Chapter 11 Case pursuant to Section 305(a) of the Bankruptcy Code because it is a two party dispute between PAE HK and the Hong Kong Plaintiffs, and (C) dismissing PAE's Chapter 11 Case pursuant to Section 109(a) because PAE HK has not shown that it resides, is domiciled or has a place of business or property in the United States.

32. Despite the Hong Kong Plaintiffs' assertions, it is in the interests of all

stakeholders (creditors and debtors) that PAE HK is seeking to reorganize. PAE HK filed for bankruptcy protection out of an abundance of caution so as to preserve the value of assets including the PAE HK Property which is essential to the PAIH Plan. Among other things, the filing preserves the value of this real property and ensures its sale under the PAIH Plan for the benefit of all creditors.

a. “Cause” has not been shown to merit dismissal under Section 1112(b) of the Bankruptcy Code.

33. Section 1112 of the Bankruptcy Code provides, in relevant part:

(b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

34. The Hong Kong Plaintiffs have failed to show “cause” for dismissal. The Bankruptcy Code provides that, chapter 11 case, or shall lift the automatic stay, “for cause, including the lack of adequate protection.” 11 U.S.C. §§ 1112(b)(1); 362(d)(1). Further, “[T]o dismiss a bankruptcy petition as a bad faith filing requires findings of “both objective futility of the reorganization process and subjective bad faith in filing the petition.” In re General Growth Properties, Inc., 409 B.R. 43, 56 (Bankr. S.D.N.Y. 2009). The Court’s determination of a debtor’s good faith depends upon the totality of the circumstances, with no single factor being conclusive of the issue. *Id.*, at 56. The Second Circuit has set forth certain factors that could be indicative of a bad faith filing, including:

(1) the debtor has only one asset; (2) the debtor has few unsecured creditors whose claims are small in relation to those of the secured creditors; (3) the debtor’s one asset is the subject of a foreclosure action as a result of arrearages or default on the debt; (4) the debtor’s financial condition is, in essence, a two party dispute between the debtor and

secured creditors which can be resolved in the pending state foreclosure action; (5) the timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights; (6) the debtor has little or no cash flow; (7) the debtor can't meet current expenses including the payment of personal property and real estate taxes; and (8) the debtor has no employees.

C-TC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship), 113 F.3d 1304, 1311 (2d Cir. 1997).

35. With respect to dismissal, the movant bears the burden of establishing that such cause exists. See, e.g., *In re BH S&B Holdings, LLC*, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010); *In re Photo Promotion Associates, Inc.*, 47 B.R. 454 (Bankr. S.D.N.Y. 1985). Courts have held generally that “a bankruptcy petition should be dismissed for lack of good faith only sparingly and with great caution.” *In re General Growth Properties, Inc.*, 409 B.R. 43, 56 (Bankr. S.D.N.Y. 2009); see also *In re Rubin Family Irrevocable Stock Trust*, No. 13-72193, 2013 WL 6155606, *10 (Bankr. D.N.J. June 11, 2015).

36. In an effort to show “cause” for dismissal of the PAE HK Petition, the Hong Kong Plaintiffs have alleged: (i) PAE HK has only one asset, no employees and few unsecured creditors whose claims appear to be small relative to those of the Hong Kong Plaintiffs; (ii) its financial condition is in essence a two party dispute that can be resolved in the Hong Kong Litigation; and, (iii) that based on the most recent financial information filed in the Chapter 11 Cases, PAE HK has little or no positive cash flow and no apparent ability to meet current expenses.⁹ The arguments have no merit and the Hong Kong Plaintiffs have failed to meet their burden of “cause”. It is clear that the PAE HK bankruptcy filing is in the interest of both the Debtors and their creditors in this matter.

⁹The Motion also asserts that the bad faith filing is further evidence by PAE HK’s failure to file typical “first day” pleadings; however this argument is mooted by the New Debtor Order and the Notice filed by PAE HK in compliance therewith.

37. First, despite all of the table pounding by the Liquidators, the Hong Kong Plaintiffs' claims against PAE HK remain *contingent, unliquidated and disputed*. These claims are based upon the exact same allegations as over two hundred (200) other still contingent, unliquidated and disputed claims filed by the Hong Kong Plaintiffs in these Chapter 11 Cases. There is no evidence before the Court that the Hong Kong Plaintiffs' claims are valid or enforceable, no evidence that they are the "largest claims", and certainly no evidence that this is solely a two party dispute. In fact, the Debtors, as a whole, have disputed the Liquidation Companies' allegations, and these allegations have already been investigated and no wrongdoings found by the securities regulatory authorities of both Hong Kong and Singapore. Further, the Hong Kong Court has, in its issued decisions in the Hong Kong Litigation, stated that after six years of making allegations against the Pacific Andes Group, the Liquidators failed to demonstrate a risk of dissipation of assets and that it is of "considerable significance" that "despite extensive investigations and document disclosure that have taken place and the Investigation Report, the regulatory agencies in Hong Kong and Singapore and the Hong Kong criminal law enforcement agencies, have concluded the investigations without further action being taken against the defendants."

38. Second, it is clear that PAE HK, along with the other Debtors, intends to utilize the United States bankruptcy proceedings to effectuate a global reorganization via the PAIH Plan. In fact, the PAE HK Property is one of the critical pieces of the transactions upon which the PAIH Plan is reliant. Therefore, on its face, PAE HK has utilized the bankruptcy process in a good faith effort to restructure its debts through the proposed PAIH Plan for the benefit of all creditors, which is "the antithesis of bad faith." *In re Rubin*, 2013 WL 6155606 at *12; *In re Trina Assocs.*, 128 B.R. 858, 873 (Bankr. E.D.N.Y. 1991) (declining to dismiss case despite two-

party dispute, state court litigation and nominal unsecured debt where debtor “has an honest intent to attempt a reorganization”); *In re Sletteland*, 260 B.R. 657, 669 (Bankr. S.D.N.Y. 2001) (“[I]n light of the failure...to show that the debtor lacked a good faith intent to reorganize his debt when he filed this case, or that he intended to use this court solely as a means to delay or frustrate...State court issues, the motion to dismiss on bad faith grounds will be denied.”).

39. Should there be any finding of bad faith in these proceedings, it submitted that it would be bad faith on the part of the Liquidators who have repeatedly frustrated the Debtors efforts to secure agreed payment to the PAIH Group Debtors’ creditors, despite the desires of the Liquidation Companies’ own creditors constituencies who have repeatedly expressed the willingness to receive payment from the proposed transactions and put an end to these bankruptcy cases. These blocking and frustration tactics are the single most important reason why the PAIH Group Debtors’ bankruptcy cases have remained unresolved. The Hong Kong Plaintiffs’ Motion is just one more example of the Liquidators’ efforts to block the resolution of these Bankruptcy Cases before this Court.

40. As set forth in its schedules, PAE HK has other assets aside from the PAE HK Property. These assets include approximately \$2,862,187.66 in receivables from non-Debtor affiliates. PAE HK also holds a lease with Pelican Food Limited, and also manages the leases for other properties located at 5 Repulse Bay Road, Hong Kong, 48 Deep Water Bay Road, Hong Kong, and 18-40 Bellevue Drive, Hong Kong, 5 Shouson Hill Road, Hong Kong, Evergreen Villa 43 Stubbs Road, Hong Kong.

41. Any requirement to litigate this issue in the Hong Kong Litigation would delay and/or significantly impact the PAIH Plan.¹⁰ As set forth above, the exact same claims have

¹⁰While the Hong Kong Litigation has been pending since 2019, discovery has not yet even commenced in the litigation.

already been asserted by the Liquidators in these Bankruptcy Cases, and they have already used these contingent, unliquidated and disputed claims to disrupt the PAIH Motion, despite the vast majority of creditors already agreeing thereto.

42. Even if “cause” were established, the court “must examine whether dismissal or conversion of a case under chapter 7 is in the best interests of the creditors and the estate.” *In re BH S&B Holdings, LLC*, 439 B.R. at 346; 11 U.S.C. § 1112(b)(2). The Bankruptcy Code provides that the court “may not...dismiss a case” if unusual circumstances exist establishing that dismissal is not in the best interests of creditors and the estate, and the debtors show “a reasonable likelihood that a plan will be confirmed within...a reasonable time.” 11 U.S.C. § 1112(b)(2). The Liquidators completely ignore this section of the Bankruptcy Code in their Motion.

43. The PAIH Plan is a liquidating plan, whereby the remaining assets of the Debtors will be sold, with the proceeds distributed to the PAIH Group Debtors’ creditors. Dismissing this case would materially alter the PAIH Plan, potentially terminate the purchase transaction with the proposed purchaser, and adversely affect the estates and their creditors. Dismissal will also likely result in the incurrence of more legal fees in the Hong Kong Litigation, drag the resolution of these Chapter 11 Cases out further, and negatively impact distributions to creditors including any allowed claim of the Liquidation Companies.

b. Dismissal of or Abstention from the Chapter 11 Case Pursuant to Section 305 of the Bankruptcy Code is Not Appropriate Under the Circumstances

44. Courts have held that “[A] motion under §305(a) to dismiss a petition or suspend the bankruptcy case is a form of extraordinary relief.” *In re RCM Global Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 524 (Bankr. S.D.N.Y. 1996)).

45. Section 305(a)(1) of the Bankruptcy Code grants the Court authority to dismiss or

suspend proceedings in a case if “the interests of creditors and the debtor would be better served by such dismissal or suspension.” 11 U.S.C. § 305(a)(1). The test under § 305(a)(1), however, is whether “both the ‘creditors and the debtor’ would be ‘better served’ by a dismissal.” *In re Aerovias Nacionales de Colombia S.A.*, 303 B.R. 1, 9–10 (Bankr. S.D.N.Y. 2003) (quoting *Eastman v. Eastman (In re Eastman)*, 188 B.R. 621, 624–25 (B.A.P. 9th Cir. 1995). In addition, courts have stressed that dismissal or suspension under § 305(a) is a form of “extraordinary relief.” *Id.* (citing *In re RCM Global Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 524 (Bankr. S.D.N.Y. 1996). For all of the reasons set forth in section A, above, the Hong Kong Plaintiffs have failed to demonstrate that the interests of both the PAE HK Debtor and its creditors would be better served by the extraordinary relief of dismissing or abstaining from hearing the Chapter 11 Case.

46. The factors to be considered in deciding whether to suspend or abstain from hearing a case under section 305 of the Bankruptcy Code are: (1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or if there is already a pending proceeding in a state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction is sought. See *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 464–65 (Bankr. S.D.N.Y. 2008).

47. As noted above, despite the unsupported arguments of the Hong Kong Plaintiffs,

the PAE HK Chapter 11 Case was filed in good faith, to utilize the protections afforded to debtors by the Bankruptcy Code in an effort to maximize the value of the PAE HK Property for the benefit of the Debtors' estates and their various creditors as set forth in the PAIH Plan. Dismissal of the PAE HK Bankruptcy Case will materially affect the ability of the PAIH Group Debtors to effectuate a viable plan of reorganization.

c. Dismissal pursuant to 109(a) is not Appropriate as PAE HK Has Basis for Filing Its Chapter 11 Case

48. Dismissal under 109(a) of the Bankruptcy Code is not appropriate. Similar to the majority of the other Debtors in these administratively consolidated Chapter 11 Cases, PAE HK is a "Related Party" to the Debtors and an integral piece of the corporate framework and necessary for the global reorganization of the Debtors, and in particular the PAIH Group Debtors. *See, e.g., In re Ridgely Commc'ns, Inc.*, 107 B.R. 72, 78 (Bankr. D. Md. 1989) ("The administration of these closely-related cases will be rendered more difficult and expensive if they are separated."); 28 U.S.C. 1408(2) (permitting venue to be had in any district "in which there is pending a case under title 11 concerning such person's affiliate"). The PAIH Group Debtors, including PAE HK, have already filed the PAIH Plan on September 27, 2021, which will resolve the bankruptcy cases for these Debtors. The PAE HK Property is a vital component of the PAIH Plan. Without the inclusion of the PAE HK Property, the proposed transaction would not be consummated as there would be insufficient funds to make the agreed distribution to creditors.

49. "For a foreign corporation to qualify as a debtor under 11 U.S.C. § 109(a), courts have required nominal amounts of property be located in the United States. The courts have noted that there is 'virtually no formal barrier' to having federal courts adjudicate foreign debtors' bankruptcy proceedings." *In re Yukos Oil Co.*, 320 B.R. 130, 132 (Bankr. S.D. Tex. 2004). As Courts in this district have held, a retainer deposit with a law firm in the United States

is sufficient to give a U.S. bankruptcy court jurisdiction over the debtor. *In re Aerovias Nacionales de Colombia S.A.*, 303 B.R. 1, 8 (Bankr. S.D.N.Y. 2003) (“[A] few thousand dollars in a bank account and the unearned portions of retainer deposits provided to local counsel constituted property sufficient to form a predicate for a filing in the United States) (citing *In re Global Ocean Carriers, Ltd.*, 251 B.R. 31 (Bankr. D. Del. 2000)); *see also In re Iglesias*, 226, B.R. 721,722-23 (Bankr. S.D.N.Y. 1998) (deciding that a bank account with \$500 is a sufficient predicate for filing by a citizen of Argentina). In this matter, PAE HK had \$36,738.00 on retainer with its counsel Klestadt Winters Jureller Southard & Stevens, LLP (“KWJSS”) on or before September 8, 2021. The payment was made by PAE HK and was (ii) paid to KWJSS pursuant to an engagement agreement related solely to representation of PAE HK as a potential chapter 11 debtor, and (iii) not intended for use by the Affiliated Debtors’ bankruptcy cases. PAE HK’s retainer deposit to KWJSS was paid prior to the filing of PAE HK’s Chapter 11 Case.

50. The PAE HK Chapter 11 Case was filed in good faith and in furtherance of the effort by the Debtors, all affiliated entities under the Pacific Andes Group, to put forward a viable plan for the benefit of their creditors as a whole, and to finally resolve these Chapter 11 Cases. PAE HK remains a vital piece of this plan.

4. CONCLUSION

For the reasons more fully set forth herein, including the adverse effect of such dismissal upon the Debtors' creditors and their estates, PAE HK respectfully requests the Motion be denied in all respects.

Dated: New York, New York
October 19, 2021

Respectfully submitted,

**KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP**

By: /s/ John E. Jureller, Jr.

Tracy L. Klestadt
John E. Jureller, Jr.
Christopher Reilly
200 West 41st Street, 17th Floor
New York, New York 10036-7203
Tel: (212) 972-3000
Fax: (212) 972-2245
Email: tklestadt@klestadt.com
jjureller@klestadt.com
creilly@klestadt.com

*Attorneys to the Debtor and Debtor in
possession*