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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

LIQUIDATION COMPANIES' OBJECTION TO THE PLAN DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING (I) DISCLOSURE STATEMENT (II) FORM OF AND MANNER OF NOTICES, (III) FORM OF BALLOTS AND (IV) SOLICITATION MATERIALS AND SOLICITATION PROCEDURES

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Alatir Limited (in liquidation), Europaco Limited (in liquidation), Metro Win Inc Limited (in liquidation), Pacific Andes Enterprises (BVI) Limited (in liquidation), Palanga Limited (in liquidation), PARD Trade Limited (in liquidation), Parkmond Limited (in liquidation), Perun Limited (in liquidation), Richtown Development Limited (in liquidation), Solar Fish Trading Limited (in liquidation) and Zolotaya Orda Limited (in liquidation) (collectively, the "Liquidation Companies") hereby object to the *Plan Debtors' Motion for Entry of an Order Approving (I) Disclosure Statement, (II) Form of and Manner of Notices, (III) Form of Ballots and (IV) Solicitation Materials and Solicitation Procedures* [ECF No. 2686] (the "Motion"). In support thereof, the Liquidation Companies respectfully state as follows.

PRELIMINARY STATEMENT

1. More than five years after these chapter 11 cases were first commenced, the Debtors have proposed two plans of liquidation for the holding companies and other "dormant, non-operating" entities that comprise the bulk of the estates. The first, the "PAIH Plan," seeks to effectuate the sale of certain non-debtor real estate owned by the Debtors' affiliates and use the sale proceeds to fund distributions. The second, the "CFGL/PARD Plan," proposes to fund distributions using the proceeds of a prior settlement relating to the Debtors' former operations in Peru. Both plans violate fundamental tenets of bankruptcy law relating to, among other things, the priority of claims and interests, and both plans are patently unconfirmable on their face.

2. The circumstances of these cases—and the provisions of the plans themselves—evidence that neither plan was proposed with the requisite "honesty and good intentions" required for confirmation. Far from being proposed in good faith in order to reorganize the Debtors' affairs or effectuate an orderly liquidation, the plans appear to be designed wherever possible to siphon value away from creditors and into the hands of equity holders. Moreover, the

plans seek to insulate a broad swath of insiders and related parties from any pre- and postpetition liability through expansive release and injunctive provisions, including nonconsensual releases of, among others, the Debtors' and their non-Debtor affiliates':

> predecessors, successors and assigns, subsidiaries, and Affiliates, and its and their current and former officers, directors, principals, shareholders and their Affiliates, members, managers, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, and other professionals, and such persons' respective heirs, executors, estates, servants and nominees.

The plans and disclosure statements contain virtually no disclosure regarding the specific parties or claims covered by the releases and no justification for the many parties included, including how (if at all) the releases are intended to affect hundreds of millions of dollars in claims the Liquidation Companies are currently pursuing against the Group's insiders and prepetition professionals. Creditors are accordingly left with little to no information on which to base their voting decisions aside from the ambiguous language of the release provisions themselves.

3. Ample reasons exist to deny confirmation of the plans. But as each plan falls woefully short of meeting the thresholds for confirmation and is unconfirmable on its face as a matter of law, the motions to approve the disclosure statements and permit the solicitation of votes should be denied.[1]

BACKGROUND

A. The Court Previously Appointed a Chapter 11 Trustee Because Creditors Had Lost All Confidence in the Debtors' Management

4. As the Liquidation Companies have previously explained, these chapter 11 cases were commenced in the wake of a multibillion-dollar trade finance fraud perpetrated by

[1] Contemporaneously herewith, the Liquidation Companies are filing an objection to the Debtors' motion to approve the disclosure statement filed in support of the CFGL/PARD Plan, which is incorporated herein by reference.

members of the Ng family, the ultimate shareholders of the Pacific Andes Group (the "Group"). *See, e.g.*, ECF No. 1571, at ¶¶ 5–20 (summarizing aspects of the fraud); ECF No. 1572, at Ex. 1–4 (reports detailing the conduct of the fraud). A simplified structure chart identifying the Debtors, certain other members of the Group and the Liquidation Companies is annexed hereto as Exhibit A and incorporated herein by reference.

5. In October 2016, less than four months after the chapter 11 cases were filed, the Court found by clear and convincing evidence that cause existed to appoint a chapter 11 trustee. *In re China Fishery Grp. Ltd. (Cayman)*, No. 16-11895 (JLG), 2016 WL 6875903, at *2 (Bankr. S.D.N.Y. Oct. 28, 2016). In doing so, the Court found that creditors had "justifi[ably]" and "understandabl[y]" lost all confidence in the Debtors' management "for a number of good reasons," including:

- the "deliberate and premeditated breach" of undertakings that members of the Group had given to courts in Hong Kong and the Cayman Islands;
- management's use of related party transfers in an attempt to protect real estate holdings and "admitted misrepresentation" regarding millions of dollars in payments from long-term supply contracts;
- billions of dollars in "unexplained" intercompany transactions within the Group and hundreds of millions in "suspicious" and "purported" prepayments to Russian entities; and
- conflicted management, "hopelessly" conflicted advisors and the removal of independent third-party oversight to which the Group had previously agreed.

Id. at *17–18. The Court also expressed "concern" about the Debtors' misrepresentations and found "good reason to question" the Debtors' trustworthiness.[2] *Id.* at *15–16.

[2] The Court declined to expressly find that existing management was untrustworthy.

6. Despite directing the appointment of a trustee to manage the Group's Peruvian fishing operations, the Court held that it would make "little practical or economic sense" to extend the trustee's appointment to the various "dormant, non-operating companies" that had also filed for chapter 11. *Id.* at *20. Accordingly, the Ng family has remained in control of the other Debtors.

B. The Debtors' Actions in These Cases Establish that Creditors' Lack of Confidence in Management Was Justified

7. For the next nearly five years, the Debtors made little progress toward either a reorganization or an orderly liquidation. Certain Debtors filed chapter 11 plans in September 2017, *see* ECF Nos. 800–01, but the Court never approved a disclosure statement and the plans were apparently abandoned. By no later than November 2018, the Debtors' exclusive periods lapsed as a matter of law. *See* 11 U.S.C. § 1121(d)(2)(A) (limiting extensions to no more than 18 months after the petition date).

8. In October 2019, certain of the Debtors filed a motion (the "PAIH 9019 Motion") to implement a series of transactions under Rule 9019, which they hailed as a "major step" that would "mov[e] these bankruptcy cases toward ultimate closure." ECF No. 1753, at 2. The PAIH 9019 Motion was predicated on the sale of certain real estate owned by the Debtors' affiliates, including six luxury residential properties in Hong Kong with a combined value of at least $85 million. *See* ECF No. 2335, at ¶¶ 9–10. Pursuant to the PAIH 9019 Motion, the properties would be sold (with no marketing or competitive bids) for less than 80% of their market value. *Id.* ¶ 11. More than $18 million in sale proceeds would be paid off the top directly to entities controlled by the Ng family, leaving third-party creditors to recover just 9.5% on account of their claims. *Id.* ¶¶ 11–12. After the filing of the motion, the Debtors later filed a "supplement"

reducing the price for the six Hong Kong properties to just $56 million and cutting creditor recoveries to just 8.75 cents on the dollar. *See* ECF No. 2362, at ¶ 7.

9. The transactions contemplated by the PAIH 9019 Motion were fatally flawed. In violation of basic tenets of bankruptcy law, the transactions were structured principally to benefit insiders (the Ng family and their controlled entities) at the expense of third-party creditors, including by paying millions of dollars in sale proceeds first to Ng family companies, *see* ECF No. 2335, at ¶ 12; by allowing the Ng family to retain control of the Group while paying creditors only a fraction of their claims, *id.* ¶¶ 24–25; and even by allowing the Ng family to retain control of the properties—the very same assets that were being "sold" as part of the transaction—for their own benefit after the transaction was consummated and free of creditors' claims. *Id.* ¶ 11(d). Not only that, the Debtors also failed to disclose material terms of the proposed transaction, including that the Hong Kong properties were in fact the personal residences of Ng family members and that creditors were required to release the Debtors' insiders (including individual Ng family members) as a condition to participating in the transaction. *Id.* ¶¶ 9–10, 13–17.

10. After more than 18 months of delays in prosecuting the PAIH 9019 Motion and only after the filing of objections by the Liquidation Companies, the Debtors withdrew the motion in April 2021 without addressing any of the legal and factual flaws with the proposed transaction. Five months later, certain of the Debtors (the "PAIH Debtors") repackaged the flawed asset sale transactions into a plan, filing the Motion together with (i) the *Disclosure Statement for First Amended Joint Chapter 11 Plan of Reorganization of Pacific Andes International Holdings Limited (Bermuda) and Certain of Its Affiliated Debtors* [ECF No. 2685] (the "Disclosure Statement" or "PAIH Disclosure Statement") and (ii) the *First Amended*

Chapter 11 Plan of Reorganization of Pacific Andes International Holdings Limited (Bermuda) and Certain of Its Affiliated Debtors [ECF No. 2685-1] (the "Plan" or "PAIH Plan").

C. The PAIH Plan Mirrors the Flawed PAIH 9019 Motion in Seeking to Benefit Insiders at the Expense of Creditors

11. The transactions contemplated by the PAIH Plan largely mirror those proposed as part of the PAIH 9019 Motion, and the PAIH Plan accordingly includes many of the same flaws that doomed the motion. Among other things, the PAIH Plan involves the sale of the same six Ng family luxury residences that were the subject of the PAIH 9019 Motion without a market test or any competitive bidding. The Debtors are also now seeking to include in the sale a seventh property: a luxury ski property in Japan ***that was not previously disclosed as part of the PAIH 9019 Motion***, despite the Debtors having previously stated that the six Hong Kong properties were the only real properties owned by their affiliates.[3] And notwithstanding the fact that the six Hong Kong properties were collectively valued at $85 million as of October 2019 and were proposed to be sold for $56 million as recently as February 2021, the Plan seeks to sell all seven properties—the six Hong Kong properties plus the new Japanese property—for total consideration of only $52 million.

12. As with the PAIH 9019 Motion, most third-party creditors are proposed under the Plan to receive distributions of no more than 8.75% on account of their claims. A majority of the economic benefits of the Plan will instead be paid to the Ng family and other insiders and related parties:

- $18 million will be set aside from the sale proceeds to pay in full the purported administrative expense claims of certain non-Debtor entities controlled by the Ng family. *See* PAIH Discl. Statement

[3] In February 2021, the Debtors represented that their affiliates (i) owned 34 real properties as of the petition date, (ii) had sold a total of 28 of them and (iii) were left with just the six Hong Kong properties that were the subject of the PAIH 9019 Motion. *See* ECF No. 2341, at ¶ 4. Nothing in the PAIH 9019 Motion ever disclosed the existence of an additional property in Japan.

§ IV(J) (providing for the "Withholding Amount"). The Debtors have never explained the basis for these claims, but nevertheless seek in the Plan to modify the Court-ordered subordination of non-Debtor affiliate claims to allow them to be paid in full. *Compare* ECF No. 93, at ¶ 9 (cash management order providing that all postpetition affiliate claims above $500,000 "shall be subordinated to existing claims of creditors ***absent prior order of the Court***" (emphasis added)), *with* PAIH Plan § 3.1(c) ("The PAIH Plan seeks to modify the provisions of the Case Management Order to increase the Non-Debtor Administrative Cap . . . .").

- $1 million that would otherwise be paid to creditors will instead be diverted to pay the Debtors' "senior management employees/ directors," presumably including individual Ng family members. *See* PAIH Plan § 3.2(b). Notably, management is proposed to receive these payments under the Plan even ***before*** the Plan is effective. *Id.* § 7.4.

- All of the Debtors' "Residual Assets"—***up to $167 million***—will be paid to an entity controlled by the Ng family on account of that entity's purported prepetition claims. *See* Plan § 5.20(b); *see also* PAIH Discl. Statement § IV(F)(5), n. 18 (defining Teh Hong Eng Investments Holding Limited as one of the "Ng Entities"). No disclosure is given as to the scope of the Residual Assets, including whether there may be any additional properties in Hong Kong, Japan or elsewhere, the existence of which the Debtors have failed to disclose. To the extent there is any residual value above $167 million, it also will be paid to the Ng family through the Plan's proposal to retain the ultimate equity interests in the Debtors, notwithstanding the fact that creditors are not proposed to be paid in full.

13. Like the PAIH 9019 Motion, the PAIH Plan also seeks to obtain releases for the primary benefit of the Ng family and their controlled entities. Unlike the PAIH 9019 Motion, however, where releases were required of creditors but not disclosed to the Court, the PAIH Plan on its face proposes expansive, ***nonconsensual*** third-party releases. In other words, where the Ng family tried and failed to obtain (undisclosed) releases from the Liquidation Companies as part of the PAIH 9019 Motion, the Debtors now seek to impose such releases on the Liquidation Companies and others through confirmation of the Plan. The releases seek to cover a wide range of insiders, affiliates, related parties, and professional persons by category and without specific

disclosure of the parties or claims that are being released, leaving creditors and the Court with little more than guesswork as to the exact scope of what is proposed.

14. For the reasons set out below, the PAIH Plan is patently unconfirmable on its face and the PAIH Disclosure Statement does not contain adequate information as required by the Bankruptcy Code. Accordingly, the Court should decline to approve the Disclosure Statement and deny the Motion.

ARGUMENT

A. The PAIH Plan Is Patently Unconfirmable

15. Courts may deny approval of disclosure statements where the plans they describe are "patently unconfirmable." *See, e.g.*, *In re Moshe*, 567 B.R. 438, 447 (Bankr. E.D.N.Y. 2017) (denying approval of disclosure statement where plan failed to provide for appropriate rate of interest on cure payments); *In re 18 RVC, LLC*, 485 B.R. 492, 497 (Bankr. E.D.N.Y. 2012) (same where plan impermissibly gerrymandered classes). "A plan is patently unconfirmable where (1) confirmation defects cannot be overcome by creditor voting results and (2) those defects concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing." *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154–55 (3d Cir. 2012). Soliciting votes on an unconfirmable plan "would be futile," *In re Quigley Co.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007), and it is therefore "incumbent upon the court to decline approval of the disclosure statement and prevent diminution of the estate." *Moshe*, 567 B.R. at 444 (quoting *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986)) (cleaned up).

16. Soliciting votes on the PAIH Plan would be futile because the PAIH Plan is patently unconfirmable on its face for at least six reasons: (1) the Plan is not feasible, (2) its treatment of claims and interests violates the Bankruptcy Code; (3) the transactions contemplated

by the Plan are not fair, equitable or in the best interests of the estates; (4) the Plan's third-party release provisions cannot be squared with *Metromedia*; (5) the Plan's exculpation provisions are facially overbroad; and (6) the Plan was not proposed in good faith.

i. The PAIH Plan Is Not Feasible

17. To be confirmed, a plan must offer "reasonable assurance of success." *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988); *see also In re Quigley Co.*, 437 B.R. 102, 142 (Bankr. S.D.N.Y. 2010) ("The plan must be workable and stand a reasonable likelihood of success."). Accordingly, the proponent of a plan must, among other things, "present proof . . . that there will be sufficient cash flow to fund the plan." *In re Leslie Fay Cos.*, 207 B.R. 764, 789 (Bankr. S.D.N.Y. 1997). This the Debtors cannot do.

18. The PAIH Plan proposes to fund distributions principally from two sources: (1) the "Sale Transactions Proceeds" of $52 million plus (2) proceeds from the release of the "Maybank Share Pledge," which the Debtors estimate to be just over $4 million. *See* PAIH Plan § 1(B). But the Plan commits the Debtors to pay out at least $59 million—more than the $56 million that will be available—including:

- $18 million to two entities controlled by the Ng family, Meridian Investment Group Pte Limited and Ocean Incorporation Limited, on account of their purported administrative claims;
- $4 million to holders of Class 2 claims;
- more than $32 million to holders of claims in Classes 5 through 17, being an amount equal to 8.75% of the nearly $368 million in allowed claims allowed in those classes;
- at least $3.7 million to holders of general unsecured claims in Class 20, being an amount equal to 8.75% of the Liquidation

Companies' $42.6 million in claims against Pacific Andes Enterprises (Hong Kong) Limited ("PAE HK")[4];

- nearly $1 million to holders of claims in Class 19, being an amount equal to 60% of the claims allowed in that class; and
- up to $1 million to the Debtors' senior management.

19. That $59 million excludes other amounts the Debtors will be obligated to pay pursuant to the Plan, including administrative expense claims, professional fee claims, priority tax claims, other priority claims, and United States trustee fees. It also excludes other prepetition claims against the PAIH Debtors that are not provided for under the Plan, including at least $1.3 billion in allowed claims against Nouvelle Foods International Limited ("Nouvelle"), *see infra* § A(ii)(c), and nearly two dozen unliquidated claims filed by the Liquidation Companies that will need to be provided for once they have been adjudicated. *See* Claim Nos. 204, 212, 216, 217, 395, 396, 397, 1631, 1633, 1644, 1636, 1664, 1692, 1695, 1697, 1706, 1709, 1711, 1718, 1721, 1754, 1756 and 1763.

20. As the Debtors cannot show that there will be sufficient cash flow to fund the payments required by the Plan, the Motion should be denied.

ii. The PAIH Plan's Treatment of Claims and Interests Violates the Bankruptcy Code

a. *The Plan Violates the Absolute Priority Rule*

21. The absolute priority rule is a "bedrock principle of bankruptcy law, under which creditors are entitled to be paid ahead of shareholders in the distribution of corporate assets." *Adler v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings Inc.)*, 855 F.3d 459, 470 (2d Cir. 2017). Under the rule: "a reorganization plan may not give property to the holders

[4] Details of the $42.6 million in claims are set out in the Liquidation Companies' motion to dismiss PAE HK's chapter 11 case. *See* No. 21-11588 (JLG), ECF No. 2. In accordance with the bar date order entered by the court, proof of these claims will be filed on or before the bar date of November 15, 2021.

of any junior claims or interests on account of those claims or interests, unless all classes of senior claims either receive the full value of their claims or give their consent." *DISH Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 88 (2d Cir. 2011) (citation omitted) (cleaned up). "[N]o Chapter 11 reorganization plan can be confirmed over the creditors' legitimate objections . . . if it fails to comply with the absolute priority rule." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988).

22. Consistent with the absolute priority rule, the PAIH Plan may not distribute to the Ng family (the Group's ultimate shareholders) any property on account of their interests unless creditors consent or are paid in full. *See DBSD*, 634 F.3d at 95 (plan improperly distributed shares and warrants to equity holders while creditors were not paid in full); *Coltex Loop Central Three Partners, L.P. v. BT/SAP Pool C Assocs., L.P. (In re Coltex Loop Central Three Partners, L.P.)*, 138 F.3d 39, 43 (2d Cir. 1998) (plan improperly provided for equity holders to retain interests while creditors were not paid in full). But that is exactly what the Plan proposes to do. Under the Plan, all "Equity Interests" in the Debtors will be extinguished ***except*** for those of N.S. Hong Investment (BVI) Limited ("N.S. Hong"), the Ng family's investment holding company and the ultimate parent of all of the other Debtors. *See* PAIH Plan, § 6.6 (authorizing the cancellation of Equity Interests "other than the Existing Interests of NS Hong"). This is a plain violation of the absolute priority rule and renders the Plan patently unconfirmable.

23. As the Plan on its face violates the absolute priority rule, the Court should refuse to grant the Motion.

b. *The Plan Discriminates Unfairly*

24. It has long been recognized that "a plan proponent may not segregate two similar claims or groups of claims into separate classes and provide disparate treatment for

those classes." *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986). This is because dissenting classes under a plan are entitled to receive "relative value equal to the value given to all other similarly situated classes." *Id.*; *see also In re SunEdison, Inc.*, 575 B.R. 220, 226 (Bankr. S.D.N.Y. 2017) ("[T]he unfair discrimination test assures fair treatment among classes of the same priority level . . . .").

25. Although there are only six PAIH Debtors, the PAIH Plan creates at least eighteen separate classes of unsecured claims, none of which are associated with specific Debtors. Creditors in most of these classes are proposed to receive a fixed distribution equal to 8.75% of the allowed amount of their claims, regardless of the specific Debtor(s) against which the relevant claims are asserted. *Compare, e.g.*, PAIH Plan §§ 5.5, 5.6, 5.7, 5.8, 5.9 (classes with recourse to only one Debtor), *with id.* §§ 5.12, 5.13, 5.14 (classes with recourse to multiple Debtors). Notably, however, the Plan inexplicably and unjustifiably proposes that some creditors will receive significantly more than other similarly situated ones.

26. As just one example, the Plan classifies most claims against PAE HK as General Unsecured Claims. *See* PAIH Plan, at App'x. A.1(55). These claims are included in Class 18, where they are proposed to receive a dividend of 8.75%. *Id.* § 5.18(b). But one unsecured creditor of PAE HK is classified separately and proposed to receive a substantially higher recovery: 60%, nearly seven times higher than PAE HK's other creditors. *Id.* § 5.19. The difference between 8.75% and 60% is material; for the Liquidation Companies' $42.6 million in claims against PAE HK, it would mean the difference between recovering $3.7 million and $25.6 million. Such a significant difference in percentage recoveries constitutes unfair discrimination. *See, e.g.*, *In re Breitburn Energy Partners LP*, 582 B.R. 321, 351 (Bankr.

S.D.N.Y. 2018) (unfair discrimination where one class was "receiving over two times greater value" than another).

27. That is not the only instance of unfair discrimination within the Plan. The Plan also creates a separate class of claims held entirely by Teh Hong Eng Investments Holding Limited ("Teh Hong Eng"), an entity controlled by the Ng family. *See* PAIH Plan § 5.20; *see also* PAIH Discl. Statement § IV(F)(5), n. 18 (defining Teh Hong Eng as one of the "Ng Entities"). Teh Hong Eng purportedly holds a claim against Pacific Andes International Holdings (BVI) Limited ("PAIH BVI"), one of the PAIH Debtors. But while the Plan proposes that most creditors of PAIH BVI will receive a dividend of just 8.75%, Teh Hong Eng is slated to receive the full value of all of the PAIH Debtors' "Residual Assets" up to a total of $167 million, or 100% of its allowed claim. PAIH Plan § 5.20(b). Discrimination of this scope and magnitude is self-evidently unfair. *Breitburn*, 582 B.R. at 351; *In re Young Broadcasting Inc.*, 430 B.R. 99, 140 (Bankr. S.D.N.Y. 2010) (unfair discrimination between one class receiving cash distributions and another receiving subscription rights where plan proponent "neither provided any evidence regarding the value of the subscription rights . . . nor any evidence that the [two classes] bargained for different forms of recovery").

28. Because the Debtors cannot meet their burden to show that the PAIH Plan is not unfairly discriminatory, the Motion should be denied.

c. *The Plan Improperly Seeks to Modify Allowed Claims to Which No Objection Has Been Filed*

29. A properly filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). A party seeking to challenge such a claim "must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim." *Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (B.A.P. 2d Cir.

2000); *see In re Oneida, Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009) (party objecting to a claim must produce "evidence equal in force to the *prima facie* case") (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992)). If no objection is filed, the claim is "deemed allowed." 11 U.S.C. § 502(a).

30. The Liquidation Companies and entities under their control timely filed multiple liquidated and unliquidated claims against the PAIH Debtors, the largest of which was asserted in a liquidated amount exceeding $1.3 billion. *See* Claim No. 1644. No objection to these claims has been interposed in the more than four years since the claims were filed, and the claims accordingly are deemed allowed in accordance with section 502.

31. Despite that fact, and without offering any evidence to refute the allegations in the claims or otherwise attempting to carry the Debtors' burden in objecting to them, the PAIH Plan provides without explanation that the Liquidation Companies' allowed claim against Nouvelle in an amount exceeding ***$1.3 billion*** will be reduced for purposes of the Plan to just over ***$6 million***, a reduction of more than ***99.5%***. *Compare* Claim No. 1644 (asserting a claim of $1,324,934,813) *with* PAIH Plan § 5.17(b) (allowing the claim in the amount of just $6.249 million).[5] In analogous circumstances, courts have refused to allow the use of exactly this type of plan provision to circumvent the procedural and substantive requirements of a claim objection under Rule 3007. *See, e.g.*, *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 497 (B.A.P. 9th Cir. 2003).

32. *Dynamic Brokers* is instructive. In that case, a creditor held a claim of $170,000 that was deemed allowed under section 502(a). 293 B.R. at 492. Without filing an

[5] This reduction means that the Liquidation Companies will in fact recover under the Plan far less than the 8.75% that the Plan proposes. 8.75% of the $6.249 million claim allowed by the Plan results in a distribution of less than $550,000, which is just ***0.04%*** of the actual claim amount of $1.3 billion.

objection to the claim, the debtor proposed a plan that would unilaterally reduce the claim to only $95,275. *Id.* After the court confirmed the plan, the Bankruptcy Appellate Panel reversed, reasoning that the debtor could not modify the claim through the plan and that section 502(a) "requires that a party in interest 'object' . . . in the manner prescribed by the Rules in order to preclude allowance." *Id.* at 496. The court continued:

> The conclusion that an objection under Rule 3007 is required in order to change the amount of a claim, over a creditor's objection in a chapter 11 case, is further supported by an examination of the list of matters that Congress authorized to be included in chapter 11 plans. *See* 11 U.S.C. § 1123(b). The only reference in that statute to adjustments of claims is the authorization for a plan to provide for "the settlement or adjustment of any claim or interest ***belonging to*** the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A) (emphasis supplied). It is significant that there is no parallel authorization regarding claims ***against*** the estate.
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> Moreover, utilizing a plan confirmation proceeding as a method of objecting to a claim presents troubling policy issues in the face of rules of procedure that appear to require formal objections to claims. The construct of the statute and rules that is held out to the public is that claims are deemed allowed unless there is an objection in accordance with rules that prescribe a precise procedure for objecting. Neither the statute nor the rules say, "oh, by the way, we can also sandbag you by sneaking an objection into a reorganization plan and hoping you do not realize that we can use this device to circumvent the claim objection procedure mandated by the rules." That is not the law, and if it were the law, it would be a material disservice to public confidence in the integrity of the bankruptcy system.

Id. at 496–97 (emphasis in original).

33. The same rationale applies to the PAIH Plan. Nothing in the Bankruptcy Code or Rules entitles the PAIH Debtors to, in the words of the *Dynamic Brokers* court, "sandbag" the Liquidation Companies with a plan that would reduce their claims by more than 99.5% without the Debtors filing an objection in accordance with Rule 3007 or coming forward with evidence to overcome the *prima facie* validity of the claims. This renders the Plan fatally

flawed and requires that the Court deny approval of the Disclosure Statement. *Id*. at 499 (confirmation was "fatally flawed" where the court "erred in effectively disallowing Varela's 'deemed allowed' claim without the benefit of a claim objection").[6]

iii. The Transactions Contemplated by the PAIH Plan Are Not Fair, Equitable or in the Best Interests of the Estates

34. Like the PAIH 9019 Motion, the PAIH Plan purports to constitute a compromise under Rule 9019. *See* PAIH Plan §§ 4.1, 6.4. A proposed compromise may be approved under Rule 9019 only if it is fair, equitable and in the best interests of the Debtors' estates. *Air Line Pilots Ass'n v. Am. Nat'l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 426 (S.D.N.Y. 1993) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). Courts have recognized that the fair and equitable standard for approval of a compromise derives from the absolute priority rule in section 1129 of the Bankruptcy Code, and compliance with the absolute priority rule is accordingly "the most important factor for courts to consider when deciding whether to approve a settlement." *Motorola, Inc. v. Off'l Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 463 n. 18 (2d Cir. 2007); *see also id.* at 464 ("In the Chapter 11 context, whether a settlement's distribution plan complies with the Bankruptcy Code's priority scheme will often be the dispositive factor.").

35. The PAIH Plan is neither fair, nor equitable, nor in the best interests of the Debtors' estates. As set forth above, the Plan violates the absolute priority rule by, among other things, permitting the Ng family to retain ownership of the Group through the equity interests in

[6] It is of no moment that the Plan purports to constitute a settlement of the claims, since the Liquidation Companies never negotiated or agreed to any settlement. *See In re Ditech Holding Corp.*, 606 B.R. 544, 622–23 (Bankr. S.D.N.Y. 2019) (denying approval of plan settlement where objecting parties "did not negotiate the 'settlement' let alone agree to it").

N.S. Hong while dissenting creditors are not paid in full. *See supra* § A(i)(b); *see also* ECF No. 2335, at ¶¶ 24–25 (objection to the PAIH 9019 Motion based on violations of the absolute priority rule). This fact alone renders the Plan unconfirmable.

36. The Debtors also cannot show that the transactions contemplated by the Plan are in the best interests of the estates. The Debtors have inexplicably been refusing to publicly market the properties in order to obtain the highest and best price ***since at least 2017***. *See* ECF No. 1753, at ¶ 18 (acknowledging in October 2019 that the Debtors had then spent "nearly two years" on the transactions contemplated by the PAIH 9019 Motion). It cannot be in the estates' interests to again propose a private sale of the Hong Kong and Japanese properties for significantly less than they are worth when the Debtors could obtain a higher price through a competitive auction sale under section 363.[7] *See Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421–22 (B.A.P. 9th Cir. 2003) ("[A] bankruptcy court is obliged to consider . . . whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale.").

37. These facts compel the conclusion that transactions contemplated by the Plan are neither fair, nor equitable, nor in the best interests of the Debtors' estates. The Court should accordingly deny the Motion.

iv. The PAIH Plan's Third-Party Release Provisions Cannot Be Squared with *Metromedia* and Its Progeny

38. "As a general rule, a bankruptcy court has no power to say what happens to property that belongs to a third party, even if that third party is a creditor or otherwise is a party

[7] The Plan is not in the best interests of creditors for substantially the same reason, further rendering the Plan unconfirmable. *See* 11 U.S.C. § 1129(a)(7).

in interest." *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 723 (Bankr. S.D.N.Y. 2019). Bankruptcy courts accordingly have "limited authority to approve releases of a non-debtor's independent claims." *Marshall v. Picard (In re Bernard L. Madoff Inv. Sec., LLC)*, 740 F.3d 81, 88 (2d Cir. 2014); *see also Aegean*, 599 B.R. at 724 ("[T]he bankruptcy court does not have *in rem* powers to enjoin one third party from enforcing claims it may have against another third party."); *In re SunEdison, Inc.*, 576 B.R. 453, 457 (Bankr. S.D.N.Y. 2017) (court lacked jurisdiction to approve releases of a "largely unidentifiable group of non-debtors from liability based on pre-petition, post-petition and post-confirmation (i.e., future) conduct occurring through the Plan's future Effective Date").

39. Even where a bankruptcy court does have jurisdiction over a non-debtor's claim against a third-party, a release of that claim is proper only in "rare" and "unique" circumstances. *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141–42 (2d Cir. 2005); *see Aegean*, 599 B.R. at 723 (noting "what an extraordinary thing it is for a court to impose an involuntary third-party release and how different that is from what courts ordinarily do"). The Second Circuit has identified at least two reasons for this: *first*, the Bankruptcy Code does not authorize third-party releases except under section 524(g) (which is not applicable here); and *second*, a third-party release "lends itself to abuse" because it effectively operates as a discharge without the releasee having to itself file for bankruptcy. *Metromedia*, 416 F.3d at 142. Courts should therefore approve such third-party releases only where they are "essential and integral to the reorganization itself," and should be "particularly skeptical of broad and general releases that are not tied, in a demonstrated way, to something that the reorganization needs to accomplish." *Aegean*, 599 B.R. at 726-27; *see also id.* at 727 ("Nonconsensual releases are not supposed to be granted unless barring a

particular claim is important to accomplish a ***particular feature*** of the restructuring." (emphasis added)).

40. The Plan seeks to impose extraordinarily expansive, nonconsensual third-party releases with respect to, among other things:

> any and all claims, obligations, suits, judgments, damages, demands, debts, remedies, causes of action, rights of setoff, other rights, and liabilities whatsoever, whether for tort, contract, violations of applicable securities laws,[8] avoidance actions, including any derivative claims, asserted or that could possibly have been asserted directly or indirectly, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all causes of action asserted or that could possibly have been asserted, based on or in any way relating to, or in any matter arising from, in whole or in part, the Plan Debtors, their estates or their nondebtor Affiliates, the conduct of the Plan Debtors' business, the filing of the Disclosure Statement or this Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Disclosure Statement or this Plan, the filing and prosecution of the Chapter 11 Cases, the pursuit of confirmation of this Plan, the subject matter of, or the transactions or events giving rise to, any claim or equity interest that is treated in this Plan, the business or contractual arrangements between the Releasing Parties, on the one hand, and any Released Party, on the other hand, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the effective date . . . .

PAIH Plan § 11.8. Although some parties are given the right to opt out of granting the releases, the Liquidation Companies are not; because the Plan defines "Releasing Parties" to include each of the Debtors' "non-Debtor Affiliate[s]," *see id.*, at App'x. A.1(108), it effectively deems the Liquidation Companies that are members of the Group to have granted the third-party releases without their consent.

[8] The Court should decline to approve any release of securities law claims. *See Aegean*, 599 B.R. at 726 (plan should not "release non-debtor officers and directors from [securities law] claims when [section 523(a)(19) of] the Bankruptcy Code would bar us from giving similar relief to those persons if they were debtors in their own cases").

41. The Plan proposes to apply these releases to a broad swath of insiders and related parties, including not only the PAIH Debtors but also their:

> non-Debtor Affiliates in the PAIH Group, and . . . such entities' predecessors, successors and assigns, subsidiaries, and Affiliates, and its and their current and former officers, directors, principals, shareholders and their Affiliates, members, managers, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, and other professionals, and such persons' respective heirs, executors, estates, servants and nominees.

Id., at App'x. A.1(107). The definition of "Released Parties" purports to except "certain agreed-upon professionals that rendered prepetition services," but neither the Plan nor the Disclosure Statement includes any description or explanation of what agreement, what professionals or what services. The Liquidation Companies are in the process of pursuing claims arising from the prepetition trade finance fraud, seeking among other things hundreds of millions of dollars in damages from the Group's prepetition accounting professionals. Nothing in the Plan or Disclosure Statement clearly identifies whether those claims would in fact be compromised by the proposed releases. Creditors cannot evaluate—and the Court cannot approve—third-party releases without full disclosure as to the exact scope of what and who is proposed to be released.

42. In addition to the lack of disclosure, the Plan's releases cannot by their terms be squared with *Metromedia*. To start, the Debtors have failed to show that any of the claims that are proposed to be released could have a "conceivable effect" on the Debtors' estates, rendering the claims outside this Court's jurisdiction. *See SunEdison*, 576 B.R. at 461 ("The touchstone for bankruptcy jurisdiction over a non-debtor's claim remains whether its outcome might have any 'conceivable effect' on the bankruptcy estate.") (quoting *Madoff*, 740 F.3d at 88) (cleaned up). Moreover, the Debtors have failed to show that, even if this Court had jurisdiction, the proposed releases may be justified on any of the five bases identified in *Metromedia*: (1) a substantial

contribution to the estates, (2) an injunction channeling the enjoined claims to a settlement fund, (3) an impact on the debtor's reorganization through claims for contribution or indemnity, (4) payment in full of the enjoined claims or (5) creditor consent. *Metromedia*, 416 F.3d at 142.

43. Three of the five bases set out in *Metromedia* can be easily disposed of: the Plan does not provide for a channeling injunction or propose to pay claims in full, and the Liquidation Companies have not consented to the releases. As to the remaining two, there can be no suggestion that the PAIH Debtors have received a substantial contribution from each of the proposed releasees included in the Plan, including the Debtors' (many) subsidiaries and affiliates and all of their respective current and former officers and directors. Most of these parties had little or nothing to do with the PAIH Debtors' cases; for any that were involved, what little contributions those parties may have made do not warrant a third-party release. *See Aegean*, 599 B.R. at 726–27 ("[T]hird-party releases are not a merit badge that somebody gets in return for making a positive contribution to a restructuring. They are not a participation trophy, and they are not a gold star for doing a good job. Doing positive things in a restructuring case – even important positive things – is not enough."). And the Debtors cannot show that the proposed releases are supported by any contribution or indemnity obligations; even if such obligations exist, the Plan's proposed releases far exceed their scope. *See SunEdison*, 576 B.R. at 463 (denying approval of a third-party releases that was "much broader than the indemnification obligations the Debtors contend support it").

44. The proposed nonconsensual releases by the Liquidation Companies likewise cannot be squared with principles of international comity. Each of the Liquidation Companies is the subject of a foreign insolvency proceeding, and their claims against the Ng family and entities under their control arising out of the trade finance fraud are currently pending before

courts in Hong Kong. *See, e.g.*, No. 21-11588 (JLG), ECF No. 2 (describing foreign liquidation proceedings and ongoing Hong Kong litigation). Any attempt to release these claims would only interfere with the jurisdiction of foreign courts and frustrate legitimate claims that are or may be prosecuted before such courts. Under principles of comity, even if this Court had jurisdiction to approve third-party releases of the Liquidation Companies' claims—and, for the reasons set forth above, it does not—the Court should "decline to exercise [that] jurisdiction" because the Liquidation Companies' claims are "properly adjudicated in a foreign state." *Maxwell Commc'n Corp. plc v. Société Générale (In re Maxwell Commc'n Corp. plc)*, 93 F.3d 1036, 1047 (2d Cir. 1996); *see also JPMorgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 424 (2d Cir. 2005) ("International comity . . . involves not the choice of law but rather the discretion of a national court to decline to exercise jurisdiction over a case before it when that case is pending in a foreign court with proper jurisdiction.").

45. Because the Debtors cannot show that this is one of the "rare," "unique" or "extraordinary" cases where approval of a third-party release would be appropriate, the Court should deny the Motion.

v. <u>The PAIH Plan's Exculpation Provisions Are Facially Overbroad</u>

46. The Plan includes broad exculpatory language that by its terms seeks to, among other things, insulate the Debtors' insiders and affiliates from a wide range of fraud, gross negligence, willful misconduct or other bad acts that occurred both before and during these chapter 11 cases, including conduct that predates—and has nothing to do with—the Plan. Such provisions are inappropriate and should at a minimum be substantially curtailed, if not stricken in their entirety.

47. To start, the Plan broadly defines "Exculpated Parties" to include not only the Debtors but also a wide swath of (tangentially) related parties that appear to have had little or

nothing to do with the Debtors' chapter 11 cases. *See* PAIH Plan, at App'x. A.1(48) (including "predecessors, successors and assigns, subsidiaries, and Affiliates, and their current and former officers, directors, principals, shareholders, and their Affiliates, members, managers, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, and other professionals, and such persons' respective heirs, executors, Estates, servants and nominees"). The Plan then purports to exculpate these parties from a range of pre- and postpetition conduct, including conduct that long predated the filing of the Plan:

> The Exculpated Parties shall neither have nor incur any liability to any Person for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing this PAIH Plan or consummating this PAIH Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with this PAIH Plan ***or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Plan Debtors***.

Id. § 11.9 (emphasis added). These provisions are overbroad on their face and cannot be approved as drafted.[9]

48. Although a plan may in certain circumstances exculpate parties in respect of "court-supervised and court-approved transactions," *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 721 (Bankr. S.D.N.Y. 2019), courts routinely decline to approve exculpation provisions that are not limited in scope or that purport to exculpate fraud, gross negligence, or other bad acts. *See, e.g.*, *In re Washington Mutual, Inc.*, 442 B.R. 314, 351 (Bankr. D. Del. 2011) (exculpation must carve out willful misconduct and gross negligence); *see also Aegean*, 599 B.R.

[9] By their terms, the Plan's exculpation provisions are not even limited to the extent of applicable law. *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 266 (Bankr. S.D.N.Y. 2007) (approving exculpation provision limited "to the extent permitted by applicable law").

at 721 (approving exculpation provision that did not apply to actual fraud, willful misconduct or gross negligence). Exculpation provisions also should be strictly limited to the parties that are actually involved in a restructuring. *See In re Ditech Holding Corp.*, 606 B.R. 544, 631 (Bankr. S.D.N.Y. 2019) (approving exculpation provision after parties agreed "to limit the scope of persons and entities being exculpated" and to exclude "any Related Parties"); *see also Washington Mutual*, 442 B.R. at 351 (exculpation "must be limited to the fiduciaries who have served during the chapter 11 proceeding: estate professionals, the Committee and their members, and the Debtors' directors and officers").

49. In the absence of substantial limitations on the Plan's proposed exculpation provisions, the Court should decline to approve the Motion.

vi. <u>The PAIH Plan Was Not Proposed in Good Faith</u>

50. Each of the foregoing grounds is an independently sufficient reason to find that the PAIH Plan is unconfirmable on its face and deny approval of the Disclosure Statement. Collectively, these significant, substantive defects also demonstrate beyond doubt that the Plan is incapable of confirmation for another reason: because it was not "proposed in good faith and not by any means prohibited by law." 11 U.S.C. § 1129(a)(3).[10]

51. "If a plan is proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected,' the plan will satisfy section 1129(a)(3). By contrast, a plan that, for instance, is proposed for ulterior motives not aligned with the Bankruptcy Code will fail to satisfy section 1129(a)(3)." *Ditech*, 606 B.R. at 578 (quoting *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988)). The good faith requirement "speaks

[10] A court may find that a plan was not proposed in good faith and is patently unconfirmable even at the disclosure statement stage. *See In re Am. Capital Equip., LLC*, 688 F.3d 145, 155 (3d Cir. 2012).

more to the process of plan development than to the content of the plan." *In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010). Accordingly, a plan developed and proposed to benefit equity holders rather than creditors is not filed in good faith. *See In re Quigley Co.*, 437 B.R. 102, 126 (Bankr. S.D.N.Y. 2010) (plan was not proposed in good faith where it was "designed to free [the debtor's parent] from derivative liability, and only incidentally, to reorganize [the debtor] to the extent necessary to confirm the plan").

52. Here, the process of the PAIH Plan's development establishes the Debtors' lack of good faith in proposing it. The Debtors previously proposed through the PAIH 9019 Motion to effectuate a similar series of asset sale transactions designed principally to benefit the Ng family and other insiders at the expense of third-party creditors. The Liquidation Companies objected, painstakingly pointing out the myriad legal and factual shortcomings in the Debtors' proposal. *See* ECF Nos. 2335, 2362. In response, the Debtors doubled down and filed the (patently unconfirmable) PAIH Plan, seeking again to divert value away from creditors and into shareholders' pockets while imposing nonconsensual, third-party releases for the benefit of insiders.

53. The Debtors' lack of disclosure throughout these cases belies any suggestion that the Plan has been proposed in good faith. As set forth in the Liquidation Companies' objections to the PAIH 9019 Motion, the Debtors previously failed to disclose material terms of the proposed asset sale transaction including, among other things, that creditors were required by the Debtors to give releases to the Debtors' insiders as a condition to participating in the transaction. *See* ECF No. 2335, at ¶¶ 13–17. To date, the Debtors have never rectified that failure. *See, e.g.*, ECF 2376, at 14 (denying the Liquidation Companies' allegations regarding insider releases); *id.* at 16 (tacitly admitting allegations but claiming that releases were only

demanded as "confidential settlement communications" and in "negotiations with the Liquidators only").

54. That is not all the Debtors have failed to disclose. Among other things, prior to filing the Plan the Debtors did not previously disclose in the PAIH 9019 Motion their indirect ownership of real property in Japan, which they now seek to include as part of the Plan transactions. The Debtors have not offered—and cannot plausibly offer—any excuse for yet more failures to comply with their disclosure obligations imposed by the Bankruptcy Code. *See, e.g.*, ECF No. 1772, at ¶¶ 2, 24 (chapter 11 trustee complaining of the Debtors' lack of disclosure); ECF No. 2335, at ¶¶ 11–17 (same by the Liquidation Companies). As the Second Circuit has explained: "'Full and fair' disclosure is required during the ***entire*** reorganization process; it begins 'on day one, with the filing of the Chapter 11 petition.'" *Momentive Mfg. Corp. v. Emp. Creditors Comm. (In re Momentive Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) (quoting *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 526 (Bankr. E.D.N.Y. 1989)) (emphasis in original); *see also Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 277 (2d Cir. 1997) ("[D]isclosure should certainly weigh heavily in a bankruptcy court's decision on th[e] issue [of bad faith].").

55. For all of the foregoing reasons, the Court should find that the Plan has not been proposed in good faith and accordingly deny the Motion.

B. <u>The Disclosure Statement Does Not Contain Adequate Information</u>

56. The Court also should not approve the Disclosure Statement unless the Debtors can show that it contains:

> information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the

> holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1), (b). Disclosure statements are "intended to be a source of factual information" about the plan rather than "an advertisement or a sales brochure." *In re Avianca Holdings S.A.*, No. 20-11133 (MG), 2021 WL 4197721, at *3 (Bankr. S.D.N.Y. Sept. 15, 2021) (citations omitted). "Accordingly, 'disclosure statements must contain factual support for any opinions contained therein since opinions alone do not provide the parties voting on the plan with sufficient information upon which to formulate decisions.'" *Id.* (quoting 7 Collier on Bankruptcy ¶ 1125.02[2]).

57. Facts that should be disclosed include:

> (1) the events which led to the filing of the bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or avoidable transfers; (17) litigation likely to arise in a non-bankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

Avianca, 2021 WL 4197721, at *4 (quoting *In re Metrocraft Publ'g Servs.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)); *see also In re Ashley River Consulting, LLC*, No. 13-13406 (MG), 2015 WL 6848113, at *8 (Bankr. S.D.N.Y. Nov. 6, 2015) (same).

58. Here, the Disclosure Statement omits, skews or whitewashes various facts relating to, among other things, the Group, the Liquidation Companies, and the prepetition trade finance fraud. In that regard, the Disclosure Statement acts as little more than an "advertisement or sales brochure" for the Debtors that must be corrected before distribution to creditors. *See Avianca*, 2021 WL 4197721, at *3. Without prejudice to the other issues identified herein, Exhibit B hereto sets out in blackline form certain minimum changes to the PAIH Disclosure Statement that the Liquidation Companies believe would be necessary to render accurate the Disclosure Statement's recitation of certain historical facts.[11]

59. More troublingly, the Disclosure Statement lacks even basic information necessary for creditors to evaluate the transactions contemplated by the Plan, including the value of the Hong Kong and Japanese real property assets that will be used to fund distributions; the negotiations that gave rise to the sale agreements for those properties, including the Debtors' failure to effectively market the properties through a public auction; details of the proposed buyer; the existence and value of other assets, including the Debtors' "Residual Assets" that are proposed to be paid to Teh Hong Eng; the basis for the proposed settlements embodied in the Plan, including the allowed claim amounts and fixed recovery percentages; an explanation of how the Plan's numerous classes of claims and interests were derived or their proposed distributions calculated; an estimate of recoveries if the cases were to be converted to chapter 7, which was proposed to be annexed to the Plan but has not actually been filed; disclosure of the

[11] The Disclosure Statement also contains numerous and material inconsistencies in its description of the Plan. *Compare, e.g.*, PAIH Plan § 6.1 ("The proposed purchase price for the Real Properties is $52,000,000 . . . ."), *with* PAIH Discl. Statement § V(F)(1) ("The aggregate purchase price for the sale . . . shall be $54,000,000 . . . ."); *compare also* PAIH Plan § 5.20(b) (providing that Class 20 claims of Teh Hong Eng will receive distributions of "any Residual Assets up to the amount of the Allowed Teh Hong Eng Loan Claim"), *with* PAIH Discl. Statement § 1(B) (table) (providing that Class 20 will receive "its *pro rata* share of the PAIH Distribution Pool"). The Court should of course require that the Disclosure Statement accurately describe what is proposed in the Plan.

exact scope of parties and claims that are proposed to be subject to the Plan's proposed nonconsensual third-party releases, or an assessment of the value that creditors are being asked to forego as part of the releases; or any of the other myriad issues identified herein.

60. The failure to include in the Disclosure Statement "adequate information" sufficient to satisfy section 1125 is yet another ground on which the Court should deny the Motion.

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CONCLUSION

Based upon the foregoing, the Liquidation Companies respectfully submit that the Motion should be denied.

Dated: October 20, 2021
New York, New York

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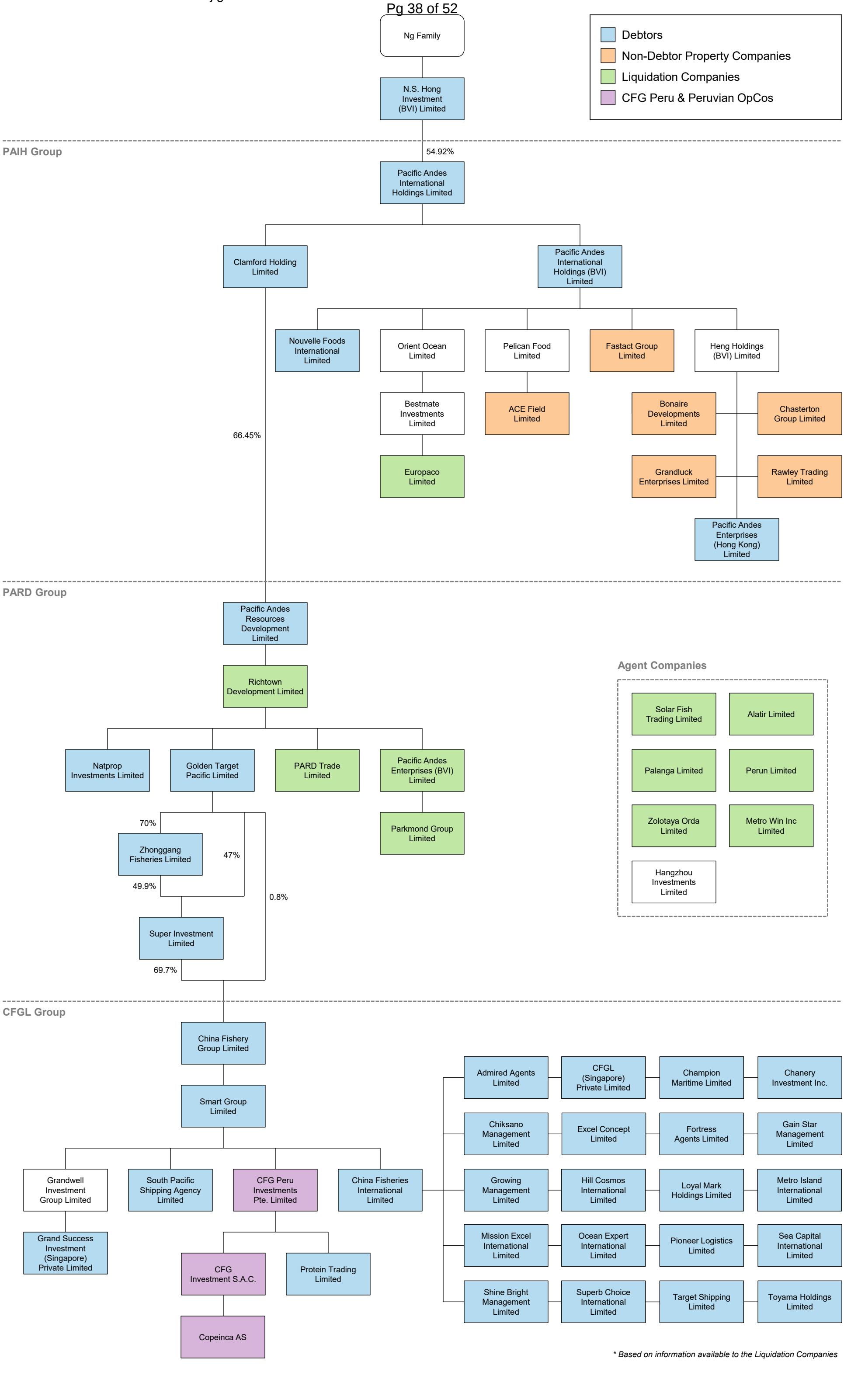
EXHIBIT A

Group Structure Chart



** Based on information available to the Liquidation Companies*

EXHIBIT B

Blacklined Excerpts from the PAIH Disclosure Statement

II. OVERVIEW OF DEBTORS' OPERATIONS

A. DEBTORS' BUSINESS

In 1986, Swee Hong Ng and his sons (collectively, with others, the "**Ng Family**") started a small seafood business in the Western District of Hong Kong trading frozen shrimp, squid, and scallops. The business, later known as the Pacific Andes Group, experienced rapid growth in the 1990s and, over time, expanded its operations to include harvesting, sourcing, ocean logistics and transportation, food safety testing, processing, marketing, and distribution of a large array of frozen fish products, as well as fishmeal and fish oil. Following international growth and expansion across the globe, the Pacific Andes Group became one of the largest seafood companies in the world. The Pacific Andes Group is comprised of over 150 operating and non-operating entities, currently including two publicly listed companies. For operation purposes, the Pacific Andes Group's business was formerly broken down into three groups of entities, described in further detail below:

The PAIH Group was principally engaged in the production and export of seafood products. The PAIH Group maintained a large fish fillet processing center in Qingdao, Shandong Province of China (the "**Qingdao Factory**"). The Qingdao Factory was one of the largest seafood processing facilities in the world, with a capacity to employ approximately 10,000 employees and process over 60,000 metric tons of seafood per year.[6] The PAIH Group, through non-Debtor National Fish & Seafood, Inc. (United States) ("**NFS**"), was also engaged in a joint venture that maintained a seafood processing, distribution, and sales business in the United States, including a processing facility in Gloucester, Massachusetts.[7] In addition, certain entities in the PAIH Group hold interests in real estate, primarily in Hong Kong. PAIH is the holding company for the PAIH Group and was formerly listed on The Stock Exchange of Hong Kong (the "**HKEx**"). PAIH was delisted on September 26, 2019. The primary assets of the PAIH Group are certain real estate interests held by wholly owned, direct and indirect subsidiaries of PAIH.

6 Upon information and belief, certain holders of the Qingdao Plant-Related Facilities have foreclosed on, or commenced foreclosure proceedings as to, the collateral supporting the Qingdao Factory. As a result, the Debtors no longer have access to and do not appear to have an economic stake in the Qingdao Factory.

7 As of the date of filing this Disclosure Statement, NFS has filed a voluntary petition under Chapter 7 of the Bankruptcy Code and a Chapter 7 trustee has been appointed.

The PARD Group[8] principally engaged in global sourcing and supply of frozen seafood products to the international markets, in particular to the PRC. The PARD Group was also engaged in the marine transportation and logistics business through the deployment of vessels that supply other fishing vessels with marine fuel, food and other basic provisions. The PARD Group's frozen fish supply chain management business was capital intensive and required an extensive amount of working capital and trade finance. PARD is the holding company for the PARD Group and is listed on the Mainboard of the Singapore Exchange Securities Trading Limited (the "**SGX-ST**"). PARD is 66.45% owned by PAIH.

The CFGL Group[9] was one of the largest producers and suppliers of fishmeal and fish oil through its fishing and processing operations located along the coast of Peru. In 2013, the CFGL Group acquired Peruvian-based operating company Corporacion Pesquera Inca S.A.C. ("**Copeinca**") and its related fishing companies, significantly expanding its share of Peru's anchovy fishing quota, which the group had been consolidating since 2006. Following the acquisition, Copeinca, CFG Investment S.A.C. ("**CFGI**"), and Sustainable Fishing Resources S.A.C. ("**SFR**" and, together with CFGI and Copeinca, the "**Peruvian Opcos**") control 16.9% of the quota for harvesting Peruvian anchovy in the northern and central zone in Peru, as well as 14.8% in the southern zone, establishing the CFGL Group as the largest quota holder in the

8 The PARD Group includes the following entities: Alliance Capital Enterprises Limited (HK), Andes Agency Limited (HK), Champion Shipping Limited (BVI), China Cold Chain Group Limited (BVI), Concept China Investment Limited (HK), Conred Limited (HK), Davis Limited (HK), Fantastic Buildings Limited (BVI), Golden Target Pacific Limited (BVI), Lions City Investment Inc. (BVI), Natprop Investments Limited (Cook Islands), New Millennium Group Holdings Limited (BVI), Pacific Andes Enterprises (BVI) Limited (BVI), Pacific Andes Food (Hong Kong) Company Limited, PARD, Pacific Andes Vegetables, Inc. (BVI), Paco (ET) Limited (Cyprus), Paco (GT) Limited (Cyprus), Paco (HT) Limited (Cyprus), Paco Alpha Limited (BVI), Paco Beta Limited (BVI), Paco Gamma Limited (BVI), Paco Sigma Limited (BVI), Pacos Trading Limited (Cayman), Pacos Trading Limited (Cyprus), PARD Trade Limited (BVI), Parkmond Group Limited (BVI), Quality Food (Singapore) Pte. Limited (Singapore), Richtown Development Limited (BVI), Super Investment Limited (Cayman), Turbo (Asia) Limited.

9 The CFGL Group includes the following entities: Admired Agents Limited (BVI), Atlantic Pacific Fishing (Pty) Limited (Namibia), Brandberg (Mauritius) Investments Holding Ltd. (Mauritius), Brandberg Namibia Investments Company (Pty) Ltd. (Namibia), CFG Investment S.A.C. (Peru), CFG Peru Investments Pte. Ltd. (Singapore), CFGL (Singapore) Private Limited (Singapore), Champion Maritime Ltd. (BVI), Chanery Investment Inc. (BVI), Chiksano Management Limited (BVI), China Fisheries International Limited (Samoa), CFGL, China Fishery Group Limited (HK), Consorcio Vollmacht S.A.C. (Peru), Copeinca AS (Norway), Copeinca Internacional SLU (Spain), Corporacion Pesquera Frami S.A.C. (Peru), Corporacion Pesquera Inca SAC (Peru), Excel Concept Limited (BVI), Fortress Agents Ltd. (BVI), Gain Star Management Limited (BVI), Grand Success Investment (Singapore) Private Limited (Singapore), Grandwell Investment Group Limited (HK), Growing Management Limited (BVI), Hill Cosmos International Limited (BVI), Inmobiliaria Gainesville S.A.C. (Peru), Inmobiliaria Y Constructora Pahk S.A.C. (Peru), Inversiones Pesqueras West S.A.C. (Peru), J. Wiludi & Asociados Consultores En Pesca SAC (Peru), Loyal Mark Holdings Limited (BVI), Macro Capitales S.A. (Panama), Metro Island International Limited (BVI), Mission Excel International Limited (BVI), Nidaro International Limited (BVI), Nippon Fishery Holdings Limited (BVI), Ocean Expert International Limited (BVI), PFB Fisheries BV (Netherlands), Pioneer Logistics Ltd. (BVI), Powertech Engineering (Qingdao) Co. Ltd. (PRC), Premium Choice Group Limited (BVI), Protein Trading Ltd. (Samoa), Ringston Holdings Ltd. (Cyprus), Sea Capital International Limited (BVI), Shine Bright Management Limited (BVI), Group Limited (Cayman), South Pacific Shipping Agency Ltd. (BVI), Superb Choice International Limited (BVI), Sustainable Fishing Resources S.A.C. (Peru), Sustainable Pelagic Fishery S.A.C. (Peru), Target Shipping Limited (HK), and Toyama Holdings Limited (BVI) (collectively, the "**CFGL Group**").

largest fishery in the world by volume. The CFGL Group's operations were based in Peru, where the CFGL Group operated approximately 47 vessels and fishes for anchovy in two seasons per year in two separate coastal regions. The CFGL Group's catch is landed at 10 production facilities along the Peruvian coast and then processed into fishmeal and fish oil. The CFGL Group formerly held interests, along with local quota holders, in a fishing, processing, and sales business, catching horse mackerel along the coast of Namibia. CFGL is the holding company for the CFGL Group and is listed on the Mainboard of the SGX-ST. PARD controls 70% of the shares in CFGL though certain of its subsidiary companies.

The Ng Family continues to maintain majority equity control the Pacific Andes Group through their interest in Debtor N.S. Hong, the family's investment vehicle. N.S. Hong directly or indirectly holds majority interests (i.e., 52.92%) in PAIH, and a minority but controlling interest in PARD and CFGL. Members of the Ng Family comprised all the executive directors of PAIH and PARD and all but two of the Executive Directors of CFGL.

The Ng Family directly and indirectly also controls a number of connected companies, including Solar Fish Trading Limited ("**Solar Fish**"), Palanga Limited ("**Palanga**"), Zolotaya Orda Limited ("**Zolotaya**"), Alatair Limited, Perun Limited, Metro Win Inc Limited ("**Metro Win**") and Hangzhou Investments Limited (the "**Agent Companies**") purportedly for the purpose of buying and selling fish from Russian fishing companies.

Between 2011 to 2015, and potentially back to 2004, members of the Ng Family, as directors of Pacific Andes Enterprises (BVI) Limited and Europaco Limited caused these companies to procure trade finance in excess of US$5.8 billion from multiple financial institutions. The funds raised were paid to the Agent Companies, specifically, Solar Fish, Palanga, Zolotaya, and Metro Win, ostensibly for the purchase of fish.

As will be further discussed in Section III.G, the FTI Liquidators assert that the purported supply and sale of fish involving the Agent Companies were fictitious and that there was no such trading of fish. The majority of the proceeds from the trade financing were paid in a circular manner through associated entities before returning to various companies within the Pacific Andes Group and were then used, amongst other things, to repay earlier obtained trade finance facilities, to partially fund the acquisition of Copeinca or for other purposes that caused loss and damage to the Pacific Andes Group, such as for the personal benefits of the Ng Family members. Most of the funds not circularized back to the Pacific Andes Group were paid to entities controlled by the Ng Family, including, among other examples, in excess of $50 million paid by Solar Fish and Hangzhou Investments Limited to N.S. Hong.

B. CAPITAL STRUCTURE

[*INTENTIONALLY OMITTED*][10] [11]

[10] [*INTENTIONALLY OMITTED*]

[11] [*INTENTIONALLY OMITTED*]

III. KEY EVENTS LEADING TO COMMENCEMENT OF CHAPTER 11 CASES

A. EL NIÑO WEATHER EVENT

[*INTENTIONALLY OMITTED*]

B. POLITICAL TENSION IN RUSSIA

[*INTENTIONALLY OMITTED*]

C. MARKET CONDITIONS

[*INTENTIONALLY OMITTED*]

D. REGULATORY INVESTIGATIONS

[*INTENTIONALLY OMITTED*]

E. APPOINTMENT OF JOINT PROVISIONAL LIQUIDATORS

In April 2014, The Hongkong and Shanghai Banking Corporation Limited ("**HSBC**"), a lender under (i) the bilateral facilities, dated May 17, 2012 (the "**Bilateral Facilities**"), by and among (a) Aqua Foods (Qingdao) Co., Ltd, Xinxing Food (Qingdao) co., Ltd, Qingdao Canning & Foodstuff Co., Ltd, and Pacific Andes Food Ltd, and Qingdao Pacific Andes International Trading Co., Ltd, as borrowers, and (b) HSBC, as lender, and (ii) the Club Facility, commenced a review of certain financial transactions of the Pacific Andes Group, based on HSBC's bank accounts records. HSBC apparently had become suspicious of transactions that it felt did not reconcile with information disclosed in PAIH's consolidated financial statements in the annual report of PAIH published for the year ending September 28, 2013 (such transactions, the "**Subject Transactions**").

Contemporaneously, as a result of the El Niño Event discussed in Section III.A above, the Pacific Andes Group had begun to experience liquidity issues so as to put certain borrowers under the Club Facility at risk of defaulting under the Club Facility. Over the next 20 months, certain borrowers under the Club Facility requested and received multiple waivers and extensions on varying terms.

In September 2014, HSBC instructed FTI Consulting, Inc. ("**FTI**") to review the Subject Transactions discussed above. On or around October 20, 2014, FTI issued a report to HSBC (the "**Initial FTI Report**")[12] detailing its preliminary findings, setting out, among other matters, their findings of circular flows of very large sums of money involving companies in the Pacific Andes Group. It is the Debtors' understanding that the Initial FTI Report was based solely on FTI's review of (i) ~~HSBC's~~ banking records of Group companies conducting the frozen fish trading business together with certain key Agent Companies and (ii) publicly available information. The

12 Although dated as of November 16, 2015, this Initial FTI Report was prepared by October 20, 2014 based on information made available to FTI as of that date.

Debtors understand that, after reviewing the Initial FTI Report, HSBC began taking steps to minimize its exposure to the Pacific Andes Group under the Bilateral Facilities. Over the course of the next four months, HSBC demanded repayment of the approximate $102 million outstanding under the Bilateral Facilities. By December 2014, the Bilateral Facilities had been repaid in full.

On September 2, 2015, the Pacific Andes Group voluntarily convened the first of a series of group meetings with certain of its creditors. At this meeting, the Pacific Andes Group outlined the then-current issues with respect to certain of its outstanding banking facilities and received feedback from creditors on a proposed way forward.

On September 7, 2015, the Pacific Andes Group formally engaged Deloitte & Touche Financial Advisory Services Limited ("**Deloitte**") as financial advisor to analyze the Pacific Andes Group's financials and to assist the Pacific Andes Group in formulating a debt restructuring and asset disposal plan. On October 9, 2015, Deloitte presented management with a preliminary restructuring plan (the "**Deloitte Restructuring Proposal**"). The Deloitte Restructuring Proposal contemplated, among other things, a sale (the "**Prepetition Sale Process**") of the Peruvian Opcos and their related non-operating entities (collectively, the "**Peruvian Business**"). Shortly thereafter, management and Deloitte met with the Pacific Andes Group's major stakeholders to walk through the Deloitte Restructuring Proposal. Management also commenced preliminary term sheet discussions with potential purchasers of the Peruvian Business. Regular group meetings were convened with certain of the Pacific Andes Group's creditors, during which Deloitte presented the creditors with progress updates on their work. Separate meetings were held for creditors at each level of the Pacific Andes Group.

On or around October 2, 2015, ~~HSBC~~the Club Lenders engaged KPMG ("**KPMG**") to act as independent financial advisor to the Club Lenders for purposes of reviewing financials prepared by Deloitte and advising them with respect to the Deloitte Restructuring Proposal. On or around October 10, 2015, KPMG was granted access to a data room established by Deloitte.

On November 16, 2015, HSBC refused to agree to a further extension and waiver of a payment due under the Club Facility and certain borrowers under the Club Facility defaulted thereon.

On November 25, 2015, HSBC filed an *ex parte* application with the High Court of Hong Kong Special Administrative Region (the "**Hong Kong Court**") requesting the appointment of provisional liquidators to Debtors CFGL and CFIL (the "**HK PL Application**"). HSBC also petitioned for the winding up of CFGL and CFIL. The Hong Kong Court granted the ~~winding up petitions~~application for provisional liquidators on an interim basis and appointed three individuals from KPMG as joint provisional liquidators of CFGL and CFIL (the "**Hong Kong JPLs**"). A hearing to consider the HK PL Application on a final basis was scheduled for December 4, 2015. On January 5, 2016, the Hong Kong Court dismissed the Hong Kong JPLs upon the undertaking being given by CFGL and CFIL to key creditor HSBC and the Hong Kong Court, namely, the January 2016 Undertaking (as defined in Section III.F below). On February 1, 2016, the Hong Kong Court entered an order dismissing the winding up petitions in light of, among other matters, HSBC's agreement to withdraw all proceedings in Hong Kong.

On November 27, 2015, HSBC filed an *ex parte* application with the Grand Court of the Cayman Islands (the "**Cayman Court**") requesting the appointment of a joint provisional liquidators for CFGL in the Cayman Islands (the "**Cayman JPL Application**"). The Cayman Court declined to consider the Cayman JPL Application on an *ex parte* basis and scheduled an *inter partes* hearing for December 8, 2015. On or around December 8, 2015, the Cayman Court granted the Cayman JPL Application and appointed joint provisional liquidators over CFGL (the "**Cayman JPLs**" and, together with the Hong Kong JPLs, the "**JPLs**"). On January 28, 2016, the Cayman Court dismissed the Cayman JPLs as a result of the January 2016 Undertaking (as defined in Section III.F below), subject to certain terms agreed between the Pacific Andes Group and HSBC following removal of the Hong Kong JPLs.

The appointment of the JPLs had an adverse impact on the Prepetition Sale Process and further exacerbated financial difficulties already being experienced by the CFGL Group by deterring key participants from collaborating with the Peruvian Business. Parties integral to the success of the Peruvian Business, including, among others, local banks, suppliers, employees, and crew, declined to continue doing business with the Peruvian Opcos in light of the JPLs' appointment. Moreover, potential investors in the Peruvian Business conveyed to the Pacific Andes Group's management team that they were no longer interested in purchasing the Peruvian Business in light of the JPLs' appointment and/or their interest was conditioned upon the JPLs being dismissed.

F. DEEDS OF UNDERTAKING

On December 25, 2015, PAIH and PARD entered into a deed of undertaking with three of the Club Lenders—Rabobank, SCB, and DBS—pursuant to which these lenders agreed to support CFGL and CFIL's position that the Hong Kong JPLs should be dismissed (the "**December 2015 Undertaking**") subject to certain conditions. Among other things, PAIH and PARD agreed to engage PriceWaterhouseCoopers Consulting Hong Kong Limited ("**PwC**") as independent reporting accountant and to appoint a Chief Restructuring Officer to, among other things, advise PAIH and PARD with respect to a financial restructuring.

On January 20, 2016, CFGL and CFIL consensually entered into a deed of undertaking with HSBC (the "**January 2016 Undertaking**" and, together with the December 2015 Undertaking, the "**Deeds of Undertaking**"). The January 2016 Undertaking embodied various terms undertaken by CFGL and CFIL, requiring CFGL and CFIL to:

a. repay certain indebtedness from the proceeds of a sale of CFGL's Peruvian subsidiaries which was to be carried out through a strict timetable of a six-month sales process (Sale Process), this being the length of time CFGL and CFIL had themselves sought to implement such sale, and to provide HSBC and other creditors with updates of the Sales Process on a full and transparent basis. The date of repayment was set at July 20, 2016;

b. appoint Grant Thornton (defined below) as independent reporting accountants, with full access to the affairs of the CF Group and with

CFGL responsible for payment of all fees reasonably incurred by Grant Thornton; and

c. consent to any subsequent application by HSBC for the immediate re-appointment of provisional liquidators in the Cayman Islands if the sale of the Peruvian Opcos' operations and the repayment of the debt owed to HSBC had not occurred by July 20, 2016.

Pursuant to and in consideration of the January 2016 Undertaking, HSBC agreed to seek entry of an order by the Cayman Court terminating the Cayman JPLs. HSBC also agreed to dismiss an appeal of the Hong Kong Court's order dismissing the winding up petitions, subject to certain conditions and milestones. Among other things and as a condition to discharge the Cayman JPLs, CFGL and CFIL agreed to appoint Paul Jeremy Brough as Chief Restructuring Officer and engage Grant Thornton Recovery & Reorganization Limited, Hong Kong ("**Grant Thornton**") as reporting accountant, to assist with the sale of the Peruvian Business. One of the milestones under the January 2016 Undertaking required the Pacific Andes Group to sell the Peruvian Business no later than July 15, 2016 (the "**Sale Milestone**"); if the Sale Milestone was not met, the Cayman JPLs were to be reappointed immediately.

Pursuant to the December 2015 Undertaking, on January 22, 2016, PAIH and PARD engaged Patrick Wong to serve as Chief Restructuring Officer of PAIH and PARD. On or around the same date, PAIH and PARD also each retained PwC to serve as an independent reporting accountant to provide an independent business review, cash monitoring, and to assist with the restructuring process.

In the months leading up to the Sale Milestone, the Pacific Andes Group and Paul Jeremy Brough developed a comprehensive, two-stage sale process of the Peruvian Business. The Group engaged CITIC CLSA to assist with identification of potential purchasers and marketing of the investment opportunity. Among other things, marketing teasers and a comprehensive information memorandum were completed and utilized in the sale process. The Pacific Andes Group also engaged Toppan Vite as consultants to assist with the establishment of the virtual data room, a copy of which has been provided to the Chapter 11 Trustee, so that bidders who had been qualified and entered the second stage of the sale process could evaluate the Peruvian Business' financials.

As the Sale Milestone approached, management became increasingly concerned with the ability of the Pacific Andes Group to sell the Peruvian Business for an amount that would maximize value for all of the Pacific Andes Group's stakeholders, specifically creditors of the PARD Group and PAIH Group. The Peruvian fishing industry had yet to recover from the El Niño Event and management was still working to rehabilitate the local business community's perception of the Peruvian Business in the wake of the appointment of the JPLs.

Shortly before the Sale Milestone, the June 2016 Debtors determined it was necessary to seek emergency relief under chapter 11 of the Bankruptcy Code. The engagement of the independent monitoring accountants PwC and Grant Thornton, and the appointment of Paul

Jeremy Brough as Chief Restructuring Officer of CFGL and CFIL were terminated, in each case without consultation with the Club Lenders.

The FTI Liquidators assert that the filing of applications by the June 2016 Debtors were in breach of the January 2016 Undertaking and that such applications constituted a coordinated plan by the Ng Family to frustrate efforts to recover value from the Ng family properly belonging to the Pacific Andes Group entities subject to a liquidation process, and to avoid the appointment of further insolvency officeholders who would have been likely to act contrary to the interest of the Ng Family in recovering value for creditors. In a judgment rendered by the Hong Kong Court on January 14, 2019 concerning an application by the Chapter 11 Trustee to use a Chambers decision of the Hong Kong Court, it was observed by the judge that the chapter 11 filings by the June 2016 Debtors were unconscionable and amounted to an abuse.

G. FTI ALLEGATIONS

Certain members of FTI (the "**FTI Liquidators**") have been appointed as joint provisional liquidators over a number of the Debtors' affiliates and other related parties, including Pacific Andes Enterprises (BVI) Limited, Parkmond Group Limited, PARD Trade Limited, Solar Fish ~~Trading Limited~~, Europaco Limited, Palanga ~~Limited~~, Zolotaya ~~Orda Limited~~, Richtown Development Limited, Metro Win ~~Inc Limited~~, Alatair Limited, and Perun Limited (the "**Liquidation Companies**"). The FTI Liquidators have issued a number of reports (each, an "**FTI Liquidator Report**"). The initial FTI Liquidator Report issued on February 13, 2017 (the "**Initial Liquidator Report**") ~~at the outset of their engagement, expressed concerns that there was~~concluded that a substantial trade finance fraud had occurred involving a circular flow of funds in relation to ~~certain~~substantial ~~pre~~payments made to ~~Russian fish suppliers and stated that~~certain Agent Companies. ~~t~~The FTI Liquidators ~~could not conclusively prove any connection between the circular flow of funds and the prepayment for fish or payment to suppliers. The~~assert that the Initial Liquidator Report ~~hypothesized that the flow of funds was suspicious and that sales of fish were~~was prepared by the FTI Liquidators upon a review of hundreds of trade finance applications across 6 key lenders, comprising over 1,000 invoices and specifically tracing a large number of transactions since at least January 2013. The FTI Liquidators stated that the use of trade finance funds raised by PARD meant that no fish could have been supplied to the Group by the Agent Companies and therefore any sales of such fictitious purchases were also fictitious. In the Initial Liquidator Report, the FTI Liquidators alleged that these findings ~~could have resulted in a~~indicated that there was likely a material misstatement of financial accounts~~. Moreover, the Initial Liquidator Report stated that, while taking a view that there were suspicious transactions, the FTI Liquidators were unable to form a definitive view without access to further accounting information.~~ across the Group.

There have been several additional FTI Liquidator Reports issued since the Initial Liquidator Report. These additional FTI Liquidator Reports have been issued to creditors in the FTI Liquidators' capacity as liquidators of the Liquidation Companies, all non-Debtor entities within and affiliated with the Pacific Andes Group. The additional FTI Liquidator Reports have ~~continued to build on the broad themes~~identified substantial further findings of wrongdoing by the Group and certain management in addition to those contained in the Initial Liquidator Report.

The Debtors vehemently dispute all the allegations made in the FTI Liquidator Reports. Further, it is the Debtors' understanding that, in conducting its investigation, the FTI Liquidators have only reviewed a subset of the relevant documents pertaining to the Subject Transactions, which may impact the FTI Liquidators' analysis. The FTI Liquidator Reports have noted that directors of the Liquidation Companies have not cooperated with them in providing records of those companies in breach of their obligations to do so. Given substantial banking, accounting, and other records available to them, the FTI Liquidators maintain they have more than sufficient evidence to support their findings.

The FTI Liquidators dispute the Debtors' summary of purported facts. The FTI Liquidators, based on their investigations over a number of years, consider the frozen fish trading business involving the use of Agent Companies to source fish was entirely fictitious. There is no evidence of any trade finance raised to pay these agents—which are all under the control of the FTI Liquidators—actually being paid to Russian fish suppliers. Furthermore, the reduction in availability of financing was largely as a result of suspicions of key lenders as to the legitimacy of PARD's business than claimed Russian political tensions. The purported trading operations, which were not real, ceased from an accounting perspective on or around August 19, 2015 when the regulatory investigation into the Group commenced. No trade finance was raised by PARD after this time, nor was any reduction of prepayments from the supply of fish or refund of cash recorded after this time despite many hundreds of millions of dollars' worth of fish being owing to PARD and CFGL. This meant that cash could no longer be circularized to give the appearance of repayments by the debtors or from prepayment refunds as had occurred previously. The crucial conclusion of the Initial Liquidator Report was that a substantial trade finance fraud has occurred based on the review of such documents, identifying various serious issues of fraudulent misuse of trade finance facilities, circular flow of funds and material misstatement of financial accounts.

IV. CHAPTER 11 CASES

A. DEBTORS' PROFESSIONALS

[*INTENTIONALLY OMITTED*][13] [14]

B. FIRST AND SECOND DAY PLEADINGS

[*INTENTIONALLY OMITTED*]

C. ADDITIONAL DEBTORS

[*INTENTIONALLY OMITTED*]

D. APPOINTMENT OF CHAPTER 11 TRUSTEE

[13] [*INTENTIONALLY OMITTED*]

[14] [*INTENTIONALLY OMITTED*]

[*INTENTIONALLY OMITTED*][15]

E. SCHEDULES AND BAR DATES

[*INTENTIONALLY OMITTED*]

F. FOREIGN PROCEEDINGS

1. *British Virgin Islands*

[INTENTIONALLY OMITTED]

2. *Singapore*

[INTENTIONALLY OMITTED]

3. *Bermuda*

[INTENTIONALLY OMITTED]

4. *Peru*

[INTENTIONALLY OMITTED]

5. *Hong Kong*

As discussed in Section III.E above, on November 25, 2015, HSBC filed the PL HK Application with the Hong Kong Court requesting the appointment of provisional liquidators to Debtors CFGL and CFIL. HSBC also petitioned for the winding up of CFGL and CFIL. The Hong Kong Court appointed three individuals from KPMG as joint provisional liquidators of CFGL and CFIL on an interim basis. A hearing to consider the PL HK Application on a final basis was scheduled for December 4, 2015. On January 5, 2016, the Hong Kong Court dismissed the Hong Kong JPLs. On February 1, 2016, the Hong Kong Court entered an order dismissing the winding up petitions.

On March 17, 2016, DHCJ Kwok SC issued an opinion providing the basis for dismissing the HK JPLs, however, the opinion was not made available to the public because the hearing at which the HK JPLs was *in camera*.

On August 30, 2016, CFGL and CFIL filed summonses in the Hong Kong Court requesting leave to disclose all documents produced in HCCW 367 and 368 of 2015 (*i.e*. the HK winding up proceedings) in overseas proceedings involving CFGL and CFIL and their affiliates ("**Summonses**"). HSBC contested the disclosure of the documents. A hearing to consider the Summonses was scheduled for September 21, 2016. On September 21, 2016, the Hong Kong Court ordered the parties to provide evidence and adjourned the Summonses to December 7, 2016. On October 12, 2016, CFGL and CFIL sought leave to amend the Summonses

[15] [*INTENTIONALLY OMITTED*]

("**Amended Summonses**") by clarifying the categories of documents for which they sought leave to disclose and the proposed use of the documents. On December 7, 2016, the Hong Kong Court further adjourned the hearing on the Amended Summonses to May 23, 2017 and permitted HSBC to file additional evidence and to indicate which, if any, individuals it wanted to cross-examine at the hearing.

On May 18, 2017, CFGL and CFIL applied to withdraw the Amended Summonses. On May 23, 2017 the Hong Kong Court granted CFGL and CFIL permission to withdraw the Amended Summonses and ordered CFGL and CFIL to pay HSBC's costs in connection with the Amended Summonses. On May 23, 2017, the Hong Kong Court ordered that copies of the documents filed in connection with the Amended Summons not be shared without further order of the Hong Kong Court.

On January 30, 2018, under High Court Miscellaneous Proceedings No. 134 of 2018, in action entitled *William A. Brandt, Jr., The Chapter 11 Trustee of CFG Peru Investments Pte. Limited (Singapore) v. The Hongkong and Shanghai Banking Corporation Limited*, the Trustee issued an *ex parte* originating summons for leave to use the Decision of DHCJ Kenneth Kwok, SC made on January 5, 2016 in HCCW 367 and 368 of 2015 issued by HSBC discharging the joint and provisional liquidators appointed over CFGL and CFGI and Reasons for Decision handed down on March 17, 2016, in the Bankruptcy Cases. By Reasons of Decision dated January 19, 2019 of J. Harris, the Hong Kong Court denied the Trustee's application. The Trustee filed an appeal with the Hong Kong Court of Civil Appeal, No. 515 of 2018. These litigations were resolved under the Trustee's approved settlement with HSBC in the Bankruptcy Court's Order confirming the CFG Peru Plan.

On May 31, 2019, the FTI Liquidators[16], on behalf of certain of the Liquidation Companies[17], filed their Statement of Claim before the High Court of the Hong Kong Special Administrative Region, Court of First Instance (the "**Hong Kong Court**") under HCA 688/2019, asserting certain claims against, *inter alia*, the Ng Family Members[~~17~~18] and certain related entities[~~18~~19] (the "**Ng Lawsuit**"). The FTI Liquidators have asserted claims against the Ng Family and the Ng Entities, among others, under Hong Kong legal principles based upon the trade

16 The following individuals (in varying combinations) were appointed as joint official liquidators of the various Liquidation Companies: Nicholas Gronow, Ian Morton, ~~John Ayers~~ and/or Joshua Taylor. On June 25, 2018, John Ayres replaced Ian Morton as joint official liquidator of Pacific Andes Enterprises (BVI) Limited, Parkmond Group Limited, Solar Fish, Europaco Limited and Richtown Development Limited (collectively, the "**FTI Liquidators**").

17 The Liquidation Companies that have commenced Hong Kong Court Action HCA 688/2019 are Pacific Andes Enterprises (BVI) Limited; Solar Fish; Richtown Development Limited; Parkmond Group Limited and Europaco Limited (together, the "**Hong Kong Plaintiffs**").

~~17~~18 "**Ng Family**" shall include Ng Joo Siang, Teh Hong Eng, Ng Joo Kwee, Ng Joo Puay, Frank, Ng Puay Yee, Annie, Ng Joo Thieng, and Ng Joo Chuan.

~~18~~19 "**Ng Entities**" shall include Teh Hong Eng Investments Holdings Limited, Throne Holdings Limited, Ansanfona Enterprises Limited, Harper Group Limited, Almeda Enterprises Limited, Gowill Holdings Limited, Glorious Bright Enterprises Limited, Kobe Holding Investment Limited, ~~or~~ Kato Investments Limited, Dalwest Limited, and Meridian Investment Group Pte Ltd.

finance fraud allegedly perpetrated by the Debtors through the fictitious fishing scheme. These same entities have asserted over 200 similar or same claims against various of the Debtors.

There have been numerous interlocutory proceedings in the Ng Lawsuit. Most significantly, ~~the~~certain Ng Family and Ng Entities have succeeded in obtaining (i) an order requiring the ~~FTI Liquidators to lodge in excess of~~Hong Kong Plaintiffs to pay security for costs totaling (in aggregate) over HK$10 million ~~with the court as security for costs until the close of pleadings~~into court with liberty to ~~the~~those Ng Family and Ng Entities to apply for further security[20]; (ii) a consent order requiring the FTI Liquidators to provide substantial further and better particulars in respect of the Statement of Claim; and (iii) a further order requiring the FTI Liquidators to honor their agreement to provide those further particulars, but such order has still not been complied with. In addition, the FTI Liquidators sought a *Mareva* injunction against the Ng Family and Ng Entities, seeking to freeze the defendants' assets. However by Decision dated June 16, 2020, the High Court of Hong Kong, Deputy High Court Judge Le Pichon dismissed the application by the FTI Liquidators, finding that after six years of making allegations against Pacific Andes, the FTI 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."

The FTI Liquidators disagree with the above characterization of Judge Le Pichon's judgment dated June 16, 2020. The court found that the Hong Kong Plaintiffs (represented by the FTI Liquidators) had shown that they had "a good and arguable case of fraud." However, there was insufficient evidence to prove that there was a concrete risk that the Ng Family and the Ng Entities would dissipate their assets in the meantime to make themselves judgment proof. With regards to the investigations carried out by the Hong Kong and Singapore regulatory authorities, the Hong Kong court acknowledged that the "standard of proof for a criminal prosecution is different from a civil complaint." Moreover, in its Reasons of Decision dated January 19, 2019, the Hong Kong Court determined that "the Chapter 11 proceedings, and consequently the Trustee's appointment, is the consequence of what appears to be a conscious fraud on the part of the Ng family on HSBC and this Court."

On or about May ~~10~~31, 2019, the FTI Liquidators, on behalf of certain of the Liquidation Companies, filed their Statement of Claim before the Hong Kong Court, under HCA 836/2019, asserting certain claims against CFGI in the action pending before the Hong Kong Court under HCA 836/2019 (the "**CFGI Lawsuit**").

20 The Plaintiffs in HCA 688/2019 were ordered to pay approximately HKD 4 million as security for costs for the 1st, 4th and 6th Defendants (being Ng Joo Siang, Ng Joo Puay, Frank and Ng Joo Thieng. The Plaintiffs were also ordered to pay approximately HKD 6.3 million as security for costs for the 2nd and 7th to 18th Defendants (being Ng Joo Chuan, The Hong Eng Investments Holding Limited, Throne Holdings Limited, Ansanfona Enterprises Limited, Harper Group Limited, Almeda Enterprises Limited, Gowill Holdings Limited, Glorious Bright Enterprises Limited, Kobe Holding Investment Limited, Kato Investments Limited, Dalwest Limited and Meridian Investment Group Pte Ltd).

On July 29, 2020, the Hong Kong Court consolidated the CFGI Lawsuit and Ng Lawsuit.

The defendants in the Ng Lawsuit filed their defense on April 1, 2021.

By Order of the Bankruptcy Court dated April 12, 2021 [ECF No. 2398], a settlement between the Trustee and the Liquidation Companies was approved, which included the withdrawal of the CFGI Lawsuit.