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**Hearing Date: January 19, 2022
Hearing Time: 11:00 a.m. (Eastern Time)**

**Objection Deadline: January 12, 2022
at 4:00 P.M.**

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

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

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In re	:
	:
	Chapter 11
CHINA FISHERY GROUP LIMITED	:
(CAYMAN), et al.,	:
	:
	Case No. 16-11895 (JLG)
	(Jointly Administered)
Debtors. ¹	:
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**DEBTORS’ MOTION FOR ENTRY OF ANY ORDER, PURSUANT TO
BANKRUPTCY RULE 9019, TO APPROVE COMPROMISE WITH
THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED**

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

China Fishery Group Limited (Cayman) and its affiliated debtor entities (the “Debtors”), by and through their undersigned counsel, Klestadt Winters Jureller Southard & Stevens, LLP, as and for their motion (the “Motion”) for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a compromise and settlement agreement (the “Settlement Deed”) between the Debtors, the Ng Family Members² and the Non-Debtor Affiliated Companies³ (collectively, the “Pacific Andes Settlement Parties”), on the one

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

³ The “Non-Debtor Affiliated Companies” are Ace Field Limited, Alliance Capital Enterprises Limited, Andes Agency Limited, Andeshali Namibia Investment Holdings (Proprietary) Limited, Aqua Foods (Qingdao) Co Ltd, Aqua Management Limited, Asarmona Holdings Limited, Atlantic Pacific Fish Processors (Pty) Ltd, Atlantic Pacific Fishing (Pty) Ltd, Atlantic Pacific Management (Pty) Ltd, Bestmate Investments Limited, Bonaire Developments Limited, Brandberg (Mauritius) Investments Holding Limited, Brandberg Namibia Investments Company (Proprietary) Limited, Cfg Investments (Shanghai) Ltd, Champion Shipping Limited, Chasterton Group Limited, China Cold Chain Food Products Trade Development Limited, China Cold Chain Group Limited, China Fishery Group Limited (Hong Kong), Concept China Investment Limited, Conred Limited, Consorcio Vollmacht Sac, Corporacion Pesquera Inca S.A.C., Corporacion Pesquera Frami S.A.C., Davis Limited, Dynamic Choice Limited, Eurofish Company Limited, Europaco (Hp) Limited, Europaco (Qp) Limited, Fastact Group Limited, Fortune Midas Limited, Full Enrich Limited, Global Research Group Inc., Global Research Services Inc., Glorious Ocean Limited, Grandluck Enterprises Limited, Grandwell Investment Group Limited, Harper Group Limited, Heng Holdings (Bvi) Limited, Inmobiliaria Gainesville S.A.C., Inmobiliaria Y Constructora Pahk S.A.C., Inversiones Pesqueras West S.A.C., J.Wiludi & Asociados Consultores En Pesca Sac, Join Power Assets Limited, Kato Investments Limited, Kobe Holding Investments Limited, Kyoshoku Company Limited, Kyoshoku Marketing Company Limited, Lions City Investment Inc., Macro Captales S.A., Mastonia Investments Limited, Meridian Investment Group Pte Ltd, Modern Energy Holdings Limited, National Fish & Seafood Limited, National Fish & Seafood Management Limited, Nidaro International Limited, Nippon Fishery Holdings Limited, Ocean Kingdom Enterprises Limited, Onn Profits Limited, Orient Ocean Limited, Pa Capital Investment Limited, Pacific Andes (Ep) Ltd, Pacific Andes (Europe) Ltd, Pacific Andes (Hp) Limited, Pacific Andes Development Limited, Pacific Andes Development Sdn Bhd, Pacific Andes Food (Bvi) Limited, Pacific Andes Food (Hong Kong) Company Limited, Pacific Andes Food Ltd, Pacific Andes International Trade Limited, Pacific Andes Treasury Management Limited, Pacific Andes Vegetables, Inc., Pacific Fruit Trading Limited, Paco (Et) Limited, Paco (Gt) Limited, Paco (Ht) Limited, Paco Alpha Limited, Paco Beta Limited, Paco-Ep Limited, Paco Gamma Limited, Paco Kappa Limited, Paco Theta Limited, Paco Zeta Limited, Paco-Gp Limited, Paco-Hp Limited, Pacos (Qp) Limited, Pacos Processing Limited (Cayman Island), Pacos Processing Limited (Cyprus), Pacos Trading Limited (Cyprus), Pae Limited, Paramount Holdings Limited, Peaklane Development Limited, Peaksville Limited, Pelican Food Limited, Pfb Fisheries B.V., Poweroute Limited, Powertech Engineering (Qingdao) Co Ltd, Premium Choice Group Limited, Qingdao Canning Foodstuff Co Ltd, Qingdao Pacific Andes International Trade Limited, Qingdao Pacific Andes International Trading Company Limited, Quality Food (Singapore) Pte Limited, Rawley Trading Limited, Rich Reward Assets Limited, Rich System Limited, Ringston Holdings Limited, Sevensseas Enterprises Limited, Silliker Hong Kong Limited, Sustainable Fishing Resources S.A.C., Sustainable Pelagic Fishery S.A.C., Teh Hong Eng Investments Holding Limited, Trade Ocean Limited, Turbo (Asia) Limited, Value Food Supply Limited (Bvi), Vision Invest Ltd, Votamos Holdings Limited, Waton Enterprises Limited, Wealthy Nation Holdings Limited, Well Hope International Limited, and Xinxing Foodstuffs (Qingdao) Co Ltd.

hand, and The Hongkong and Shanghai Banking Corporation Limited (“HSBC-HK”), on the other hand. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory predicates for the relief requested herein is Bankruptcy Rule 9019.

PROCEDURAL BACKGROUND

3. On June 30, 2016, certain of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Pacific Andes Resources Development Limited (Bermuda) (“PARD”) filed its chapter 11 petition on September 29, 2016, and thereafter certain other affiliates of the Debtors filed similar petitions before the Bankruptcy Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. Except as set forth below, no trustee or examiner has been appointed herein for the Debtors.

5. William A. Brandt, Jr. (the “Chapter 11 Trustee”) was appointed as chapter 11 trustee for CFG Peru Investments Pte. Limited (Singapore) (“CFG Peru”) by Court Order dated November 10, 2016. [ECF Dkt. # 219].

6. No official committee of unsecured creditors has been appointed in these Bankruptcy Cases by the Office of the United States Trustee.

7. On June 10, 2021, the Bankruptcy Court entered an Order, which, *inter alia*,

confirmed the Creditor Plan Proponents' plan of reorganization for CFG Peru (the "CFG Peru Plan"). [ECF Dkt. # 2569].

8. On September 27, 2021, along with the respective disclosure statements, the Debtors filed (i) *First Amended Joint Chapter 11 Plan of Reorganization Pacific Andes International Holdings Limited (Bermuda) and Certain of Its Affiliated Debtors* (the "PAIH Plan") [ECF Dkt # 2685-1]; and (ii) *First Amended Joint Chapter 11 Plan of Reorganization of China Fishery Group Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), and Certain of Their Affiliated Debtors* (the "CFGL-PARD Plan") [ECF Dkt. # 2684-1].

9. On December 22, 2021, the Bankruptcy Court granted the Debtors' respective *Motions to Approve (I) Disclosure Statements, (ii) Form of and Manner of Notice, (III) Form of Ballots, and (IV) Solicitation Materials and Solicitation Procedures* with respect to both the PAIH Plan and CFGL-PARD Plan, as modified and amended.

BACKGROUND

10. Since the outset of these bankruptcy cases, the Debtors have alleged that the filing of these bankruptcy cases was the result of, among other things, certain actions attributable to HSBC-HK. *See, e.g., Declaration of Ng Puay Yee Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York and In Support of Debtors' First Day Motions and Applications*, ¶¶ 24-28, 103-122. [ECF Dkt # 6]. With the bankruptcy cases now nearing an end, taken together with other settlements in these cases and the Chapter 11 plans of the Debtors and of CFG Peru, the proposed settlement between the parties will resolve material open issues, avoid the expense and delay of potential, additional multi-jurisdictional litigation, and play a significant part in paving the way for the confirmation of the Debtors' PAIH Plan and CFGL-PARD Plan.

11. Prior to the bankruptcy cases, certain of the Pacific Andes Settlement Parties and certain other members of the Pacific Andes Group maintained banking relationships and entered into financing transactions with HSBC-HK, including that certain Facility Agreement, dated as of 20 March 2014, by and among CFG Investment S.A.C. (“CFGI”), China Fisheries International Limited (“CFIL”), and Corporacion Pesquera Inca S.A.C. as borrowers, China Fishery Group Limited (“CFGL”), CFIL, and Corporacion Pesquera Inca S.A.C. as guarantors, and the agents and lenders party thereto, including HSBC-HK as a lender (as amended, modified or supplemented from time to time, the “Club Facility Agreement”);

12. The obligations under the Club Facility Agreement and certain other transactions among HSBC-HK and members and/or Affiliates of the Pacific Andes Group have been subject at times prior to the date hereof to default, dispute, negotiation and litigation, including, among other things, in connection with:

- (i) The proceedings commenced pursuant to a petition of HSBC-HK, filed on 24 November 2015, with the High Court of Hong Kong Special Administrative Region Court of First Instance [HCCW 367/2015, HCCW 368/2015] against certain of the Debtors and their related entities seeking, among other things, the winding up of CFGL and CFIL, and the appointment of provisional liquidators at CFGL and CFIL, which was dismissed on 1 February 2016;
- (ii) The proceedings commenced pursuant to a petition of HSBC-HK, filed on 27 November 2015, with the Grand Court of the Cayman Islands Financial Services Division [Cause No: FSD 186 of 2015 (AJJ)] against certain of the Debtors and their related entities seeking, among other things, appointment of provisional liquidators at CFGL, which was dismissed on 28 January 2016; and

- (iii) The Deed of Undertaking, dated as of 20 January 2016, among CFGL, CFIL and HSBC-HK, whereby CFGL and CFIL agreed, among other things, to fully repay the Club Loans and commence a sale process for the Pacific Andes Group.

13. On or about June 29, 2018, the Chapter 11 Trustee filed a complaint, commencing an adversary proceeding against HSBC-HK, under Adv. Proc. No. 18-01575 (“HSBC-HK/Trustee Adversary Proceeding”), which alleged, among other things, claims under Peruvian and Hong Kong law, tortious interference, and equitable subordination or disallowance under the Bankruptcy Code. HSBC-HK moved to dismiss the HSBC-HK/Trustee Adversary Proceeding and disputed all allegations. The matters relating to the HSBC-HK/Trustee Adversary Proceeding were litigated in both the United States and Hong Kong. The HSBC-HK/Trustee Adversary Proceeding was ultimately settled, resolved and dismissed with prejudice by that certain *Stipulation and Consent Order (A) Dismissing Adversary Proceeding with Prejudice Pursuant to Fed.R.Civ. P. 7041(a)(2) And (B) Reflecting Settlement By and Among William A. Brandt Jr., Chapter 11 Trustee, And The Hongkong And Shanghai Banking Corporation Limited*, dated June 10, 2021. [ECF Dkt #2578], with no admission of fault or liability by HSBC-HK, the Chapter 11 Trustee or any other party.

14. On June 10, 2021, the Bankruptcy Court confirmed the CFG Peru Plan, and, in conjunction therewith, approved that certain settlement agreement (the “Global Settlement Agreement”) between the Debtors, their non-Debtor Affiliates and the Ng Family Members, on the one hand, and the Creditor Plan Proponents (as defined in the Global Settlement Agreement), on the other hand. [ECF Dkt # 2558-3]. Although a lender under the Club Facility Agreement, HSBC-HK was not a party to the Global Settlement Agreement, and all parties expressly reserved all rights as against the others. *Id.*, Section 3.4.

15. In connection with the chapter 11 cases and the efforts therein to achieve the global resolution of disputes and resolve the liabilities of the Debtors, the parties have entered into a

settlement and release of potential claims and causes of action in accordance with the terms and conditions set forth in the Settlement Deed which is attached hereto as Exhibit A.

16. The material terms⁴ of the Settlement Deed are as follows:

a. With certain exceptions enumerated in the Settlement Deed, the Parties agree to exchange global releases as of the Settlement Deed Effective Date.

b. The Parties agree never to commence or prosecute against another Settlement Release Party any complaint, suit, arbitration, or proceeding of any kind (whether civil, criminal, regulatory, administrative or otherwise) based upon or related to any Claim, demand, Cause of Action, damage or liability that is released under the Settlement Deed, or upon any other fact or assertion relating to any aspect of any such Claim or Cause of Action that such Settlement Release Party asserted or could have asserted against any Settlement Release Party, or to assist or voluntarily aid a third party (directly or indirectly) to commence, prosecute, or cause such a Claim or Cause of Action to be commenced or prosecuted against any other Settlement Release Party, save that nothing in the Settlement Deed shall preclude or prevent any Settlement Release Party from co-operation required by law with any public authority, or from complying with any legal duty, nor shall it apply to any consequences of such lawful actions.

c. The releases set forth in the Settlement Deed do not release, settle, compromise or discharge, among other things, any Claims in respect of (i) the contractual obligations or liabilities of any Club Facility Obligor under the Club Facility Agreement, the Finance Documents or the LSA Guarantee, (ii) any right of recovery of HSBC-HK or any of its successors or assigns in respect of any such Claim in the Debtors' Chapter 11 Cases, the U.K. Proceeding or any restructuring or related proceeding in respect of CFG Peru, the Peruvian OpCos or the other CFG Peru Subsidiaries, or (iii) any other rights or Claims created or preserved under or in connection with such proceedings (the Claims referred to in clauses (i) through (iii) of this Clause 3.2(b), collectively, the "Club Facility Reserved Claims"); provided that the Club Facility Reserved Claims other than those referred to in the foregoing clause (iii) shall be released under the Settlement Deed once the Effective Date for all of the Plans (as defined in each of the Plans) and the Plan Effective Time for the U.K. Restructuring Plan (as defined therein) shall have occurred;

d. Each Pacific Andes Settlement Party, on the one hand, and HSBC-HK on the other hand, agree to indemnify, defend, and hold harmless the other against all costs and damages (including the entire legal expense of

⁴ The description set forth herein is qualified in all respects by the actual terms of the Settlement Deed, and in the event of a dispute, the terms of the Settlement Deed shall control.

the other party) incurred in all actions, claims or proceedings brought by such party in respect of any Claims that have been released under the Settlement Deed.

e. Each Pacific Andes Settlement Party consents to the full and final closure of any remaining deposit accounts held by such Pacific Andes Settlement Party at HSBC-HK or any other HSBC-HK Release Party.

f. HSBC-HK agrees to abstain from filing any objections to, and shall not (whether directly or indirectly in any manner whatsoever) direct, instruct, advise, encourage or otherwise cause any other parties to file an objection to or otherwise hinder or delay the PAIH Plan and CFGL/PARD Plan, as may be amended; *provided* that HSBC-HK shall not be prohibited from filing an objection to the PAIH Plan or the CFGL/PARD Plan to the extent of any changes to such plans following the Settlement Deed Effective Date which are materially adverse to any HSBC Release Party, as a holder of Club Loans, as a party to the Settlement Deed or otherwise, including, without limitation, with respect to any distributions or recoveries in respect of the Club Loans, whether under the Plans, the U.K. Restructuring Plan or otherwise, or with respect to any releases or other rights conferred under the Settlement Deed.

g. It is expressly acknowledged and agreed by each of the Parties that the execution and performance of the Settlement Deed is not, and is not to be construed as, any admission whatsoever of any liability on the part of any Party, or the veracity of statements made by any Party.

h. Any allegation of liability or wrongdoing made against any Pacific Andes Settlement Party or any HSBC-HK Release Party in Hong Kong or elsewhere are completely and specifically denied. Without prejudice to the foregoing, each Settlement Release Party hereby agrees not to assert or advance any Claim released pursuant to the Settlement Deed.

17. The Parties have agreed to enter into the Settlement Deed on the basis that (i) neither any negotiations of nor the Settlement Deed shall waive HSBC-HK's objections to the Court's exercise of jurisdiction over HSBC-HK, or be deemed to create personal jurisdiction over HSBC-HK and (ii) no action by HSBC-HK relating to compliance with the terms of the Settlement Deed shall waive HSBC-HK's objections to the Court's exercise of jurisdiction over HSBC-HK, or be deemed to create personal jurisdiction over HSBC-HK.

18. Upon approval of the Motion, the settlement with HSBC-HK shall resolve all claims asserted by HSBC-HK in these chapter 11 cases.

RELIEF REQUESTED

19. By this Motion, the Debtors seek entry of an order, pursuant to Bankruptcy Rule 9019(a), authorizing the Debtors to enter into and approving the Settlement Deed and the terms and conditions contained therein (and barring suits or other legal actions in violation of the terms thereof), and determining that the compromise contained therein is fair and reasonable under the circumstances, and that approval of the Settlement Deed is in the best interest of the Debtors' estate and their creditors.

BASIS FOR RELIEF

20. Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). In ruling on a motion pursuant to Bankruptcy Rule 9019(a), the court must find that the proposed settlement is fair and equitable and is in the best interests of the estates. *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Ionosphere Clubs, Inc. v. American National Bank and Trust Co. of Chicago (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd* 17 F.3d 600 (2d Cir. 1994); *In re Schneider*, 2015 WL 1412364, *4-5, No. 14-CV-1166 (JMA) (E.D.N.Y. Mar. 26, 2015); *Fjord v. AMR Corp., et al. (In re AMR Corp.)*, 502 B.R. 23, 42 (Bankr. S.D.N.Y. 2013).

21. In order to reach such a decision, the Court must be apprised “of all facts necessary for an intelligent and objective opinion” of whether the claim will be successful, the likely expense, length and the degree of complexity of the litigation, the potential difficulties of collecting on a

judgment, “and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” *TMT Trailer Ferry*, 390 U.S. at 424.

22. To constitute a fair and equitable compromise or settlement, the Court must find that the settlement does not “fall below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F. 2d 599, 608 (2d Cir. 1983); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 758-59 (Bankr. S.D.N.Y. 1992); *In re Int’l Distribution Centers, Inc.*, 103 B.R. 420, 423 (Bankr. S.D.N.Y. 1989).

23. The Court should also consider the fair and reasonable course of action for the debtor’s estate, with the limited available assets, giving consideration to the interests of creditors and the avoidance of burdening the estate with undue waste or needless or fruitless litigation. *In re Del Gross*, 106 B.R. 165, 167-168 (Bankr. N.D. Ill. 1989); *see also In re Culmtech, Ltd.*, 118 B.R. 237, 238 (Bankr. M.D. Pa. 1990); *In re Lawrence & Erausguin, Inc.*, 124 B.R. 37, 38 (Bankr. N.D. Ohio 1990); *In re Bell & Beckwith*, 93 B.R. 569, 574-75 (Bankr. N.D. Ohio 1988).

24. The Court is not required to determine conclusively the merits of a claim subject to compromise or to find that a proposed settlement constitutes the best results obtainable. Instead, the Court should “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *In re Adelpia Communications Corp.*, 368 B.R. 140, 225 (Bankr. S.D.N.Y. 2007); *see also Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Schneider*, 2015 WL 1412364 at *4 (E.D.N.Y. Mar. 26, 2015); *In re Worldcom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 758-59 (Bankr. S.D.N.Y. 1992).

25. The settlement with HSBC-HK, together with the CFG Peru Plan, the PAIH Plan and the CFGL-PARD Plan, resolves all claims and disputes among the Debtors and HSBC-HK in

these chapter 11 cases, and such settlement is a material step to clearing the path towards confirmation of the Debtors' plans of reorganization. Further, the settlement resolves disputes among HSBC-HK and the Ng Family Members and the Ng Entities that, if left unresolved, could lead to further litigation in Hong Kong or other jurisdictions and may, in turn, result in additional claims (whether for indemnity, contribution, reimbursement or otherwise) against, and litigation costs borne by, the Debtors' estates.

26. Based upon the foregoing, the Debtors respectfully submit that the settlement embodied by the Settlement Deed is fair and equitable, is in the best interests of the Debtors' estates, and is well above the lowest point in the range of reasonableness. Accordingly, the Debtors respectfully request that the Court approve the Settlement Deed and authorize entry into same by the Debtors.

NOTICE

27. Notice of this Motion will be given in accordance with Bankruptcy Rule 2002. The Debtors submit that such notice constitutes good and sufficient notice and that no other or further notice need be given.

NO PRIOR REQUEST

28. No previous application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully requests that this Court enter an order granting the relief requested in the Motion, together with such other and further relief as the Court determines to be just and proper.

Dated: New York, New York
January 7, 2022

KLESTADT WINTERS JURELLER
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