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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: CHINA FISHERY GROUP LIMITED (CAYMAN), *et al.*, Debtors.	Chapter 11 Case No. 16-11895 (JLG) (Jointly Administered)
In re: CFG PERU INVESTMENTS PTE. LIMITED (SINGAPORE), Debtor.	Chapter 11 Case No. 16-11914 (JLG)

HONG KONG PLAINTIFFS' OBJECTION TO THE CHAPTER 11 TRUSTEE'S EMERGENCY MOTION FOR ENTRY OF AN ORDER (A) APPOINTING A MEDIATOR, (B) DIRECTING THE PROPOSED MEDIATION PARTIES TO PARTICIPATE IN MEDIATION AND (C) AUTHORIZING TAKING CORPORATE GOVERNANCE ACTIONS NECESSARY TO ENABLE NON-DEBTOR CFG INVESTMENT S.A.C. TO PARTICIPATE IN MEDIATION

Pacific Andes Enterprises (BVI) Limited (in liquidation) ("**PAE BVI**"), Solar Fish Trading Limited (in liquidation) ("**Solar Fish**"), Europaco Limited (in liquidation) ("**Europaco**"), Palanga Limited (in liquidation) ("**Palanga**") and Zolotaya Orda Limited (in liquidation) ("**Zolotaya**" and, together with PAE BVI, Solar Fish, Europaco and Palanga, the "**Hong Kong Plaintiffs**") hereby object to the Chapter 11 Trustee's Emergency Motion for Entry

of an Order (A) Appointing a Mediator, (B) Directing the Proposed Mediation Parties to Participate in Mediation and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation [ECF No. 1856] (the "**Motion**"), and in support thereof respectfully state as follows.

INTRODUCTION[1]

1. Barely an hour after the Trustee complained that certain parties sought relief from this Court "without any advance notice or attempt to meet and confer,"[2] he did exactly the same thing. By the Motion—filed without any advance notice or attempt to meet and confer—the Trustee seeks to compel the Liquidators to come to the United States to mediate their claims against a non-Debtor that are pending in a foreign proceeding before a foreign court. There is no basis to grant this relief.

2. The Hong Kong Action (defined below) involves only BVI plaintiffs and a Peruvian defendant. It arises entirely under foreign law and is pending in a foreign forum. Neither the Trustee nor any of the Debtors is a party to the action, and no property of the estate is involved. The resolution of the action will have no "conceivable effect" on the estates. There is simply no nexus between these chapter 11 cases and the Hong Kong Action that would give this Court authority to order mediation of any disputes at issue in that proceeding.

3. Having no colorable argument that this Court has jurisdiction to compel the parties in a foreign proceeding to mediate, the Trustee resorts to obfuscation. He calls the Hong

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[1] Capitalized terms not defined in the Introduction have the meaning ascribed to such terms elsewhere in this Objection.

[2] This statement was made in the Trustee's objection to a Rule 2004 motion filed on December 10, 2019 at 3:54 p.m. *See* Tr.'s Obj. R. 2004 Mot. ¶ 1, ECF No. 1853. The Motion was filed the same day at 5:15 p.m.

Kong Plaintiffs' claims "unfounded," "dubious" and "invalid" while conceding that the Liquidators have detailed them in ***multiple, public reports*** comprising hundreds of pages that identify specific transfers giving rise to the claims. He blames his own failure to procure a buyer for the Peruvian OpCos on a purported "cloud[]" created by the Liquidators, which is merely the latest in a long list of excuses offered to explain why no sale has materialized at an acceptable price.[3] And he claims that an emergency exists because the Liquidators will "undoubtedly" use the proceeds of a proposed settlement to prosecute the Hong Kong Action—despite the fact that the Liquidators have publicly disavowed the settlement.[4]

4. Unfortunately for the Trustee, none of his allegations create jurisdiction in this Court to order plaintiffs in a foreign proceeding against a foreign defendant in a foreign court to participate in mediation in the United States. Nor do they justify his request that this Court usurp the role of the Hong Kong Court to adjudicate disputes and control parties and proceedings that are properly before it. As a result, the Motion should be denied.

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[3] This Court previously recounted that bids for the Peruvian OpCos have been "disappointing" since well before the Liquidators were appointed. *In re China Fishery Grp. Ltd. (Cayman)*, Case No. 16-11895 (JLG), 2016 WL 6875903, at *12 (Bankr. S.D.N.Y. Oct. 28, 2016) (expressions of interest received in mid-2016 were "disappointing" and, "in management's eyes, not an adequate reflection of the value of the business").

[4] As the Liquidators have explained, no settlement has been reached. Liquidation Cos. Stmt. ¶ 2, ECF No. 1780. In fact, discussions are ongoing to revise the proposed settlement to carve out the Liquidators' claims, but this too has not yet been agreed. In any event, the hearing on the motion to approve the settlement has been adjourned to January 22, 2020, obviating any claim to an emergency based on the upcoming hearing.

BACKGROUND[5]

A. The Chapter 11 Cases Are Commenced in Breach of Undertakings to Hong Kong and Cayman Courts, Resulting in the Trustee's Appointment

5. On June 30, 2016, and on various dates thereafter, CFG Peru Investments Pte. Limited (Singapore) ("**CFG Peru**") and certain of its affiliates (collectively, the "**Debtors**") filed voluntary chapter 11 cases in this Court.

6. The Debtors' cases were commenced in violation of undertakings given to courts in Hong Kong and the Cayman Islands. *In re China Fishery Grp. Ltd. (Cayman)*, Case No. 16-11895 (JLG), 2016 WL 6875903, at *15 (Bankr. S.D.N.Y. Oct. 28, 2016) ("[T]he Debtors deliberately breached all aspects of the Deeds of Undertakings by commencing these Chapter 11 cases . . . ."). As a result of this and other factors, the Court ordered the appointment of a chapter 11 trustee for CFG Peru. *Id.* at *20. In doing so, the Court identified "a number of good reasons" that creditors "ha[d] lost all confidence in the Debtors' management," including "several billion dollars of unexplained intercompany transactions" and "hundreds of millions of unexplained purported prepayments to Russian entities." *Id.* at *17.

7. Pursuant to an order dated November 10, 2016, William A. Brandt, Jr. (the "**Trustee**") was appointed as the chapter 11 trustee for CFG Peru.

B. The Liquidators Are Appointed and Investigate Trade Finance Fraud Within the Group

8. Between November 18, 2016 and February 13, 2017, the Eastern Caribbean Supreme Court in the High Court of Justice, British Virgin Islands (the "**BVI Court**") made

[5] Much of this information has been set forth in previous filings, including in the Declaration of Nicholas James Gronow dated April 29, 2019 and filed at ECF No. 1572.

orders for the appointment of joint and several liquidators (the "**Liquidators**") for each of the Hong Kong Plaintiffs.

9. Two of the five Hong Kong Plaintiffs—PAE BVI and Europaco—are members of the Pacific Andes group of companies (the "**Group**"), the beneficial ownership of which ultimately is held by members of the Ng family. The other three are "agent" companies that purported to do business with various entities within the Group.

10. Since their appointment, the Liquidators have analyzed several billion dollars of suspicious and largely circular transactions among members of the Group and the purported agent companies (the "**Trade Finance Fraud**"). In sum, these transactions involved Group companies raising substantial trade finance funds and transferring them to agent companies who (the Group claimed) would source fish for the Group from Russian fishing suppliers. In reality, the Liquidators have determined that the agent companies did not source fish for the Group as claimed. Rather, the agent companies transferred most of the funds they received in a largely circular fashion back to the Group. This circular funds flow allowed the Group to repay earlier trade finance loans and draw new loans while Group companies reported fictitious revenue, profits and assets resulting from the transfers.[6] The essential facts underlying this fraudulent scheme—purported prepayments to Russian suppliers and substantial unexplained intercompany transactions—were, as noted above, some of the same facts relied on by the Court in its decision to appoint the Trustee. *See In re China Fishery Grp. Ltd. (Cayman)*, Case No. 16-11895 (JLG), 2016 WL 6875903, at *17 (Bankr. S.D.N.Y. Oct. 28, 2016).

[6] Certain funds that were not used to repay trade finance loans were paid to entities controlled by the Ng family. Because members of the Ng family are the ultimate owners of the Group, they also benefitted from the Group's fictitious profits in the form of salaries, dividends and other benefits.

11. In connection with their investigation of the Trade Finance Fraud, the Liquidators sought information and documents from persons and entities involved in the alleged transactions, including Group companies, Ng family members and directors or former directors of the relevant entities. All have been generally uncooperative, including former directors of companies now in liquidation that have refused to explain the circular funds flows and failed to provide corporate records in violation of their duties under applicable BVI law. Notwithstanding these obstacles, the Liquidators obtained an overwhelming volume of banking records and key accounting records from which they produced a series of reports summarizing the results of their investigation and outlining the Trade Finance Fraud. These reports have been distributed to creditors and other interested parties and, in several cases, publicly filed on the docket in these chapter 11 cases.[7]

12. Notably, one of the Liquidators' reports issued in April 2017 described an aspect of the Trade Finance Fraud involving the improper use of approximately $152 million of trade finance proceeds for the acquisition of Copeinca AS ("**Copeinca**"), a holding company through which the Group owns one of its two valuable non-Debtor subsidiaries (the "**Peruvian OpCos**"), Corporacion Pesquera Inca S.A.C.

C. The Trustee Fails to Take Any Meaningful Action Regarding the Trade Finance Fraud or the Liquidators' Investigation

13. Shortly after the issuance of the Liquidators' April 2017 report, the Trustee admitted in a filing with this Court that he had received "reports, materials and exhibits"

[7] Multiple reports have been issued including ones dated February 13, 2017, April 13, 2017, October 31, 2017, November 2, 2018 and October 3, 2019. Four of these were annexed as Exhibits 1 through 4 to the Declaration of Nicholas James Gronow dated April 29, 2019 and filed at ECF No. 1572.

prepared by the Liquidators indicating "intimations and indications of fraud . . . with respect to the procuring of trade finance." Tr.'s Status Report 40, ECF No. 481. The Trustee acknowledged that he was "more than generally aware" of the Liquidators' work, including "their tentative conclusion . . . that funds raised by way of potential trade finance fraud done through [PAE BVI] and [Europaco] . . . were highly likely the source of funds used to help fund the acquisition of Copeinca." *Id.* Given that Copeinca is a subsidiary of CFG Peru, the Trustee further stated that the Liquidators' finding that proceeds of the Trade Finance Fraud had been used to acquire that entity was "[s]pecifically of importance to" him. *Id.*

14. Despite this, in the years since the April 2017 report, the Trustee has failed to address the implications of the Trade Finance Fraud. He has not meaningfully engaged with the Liquidators regarding the sale of the Peruvian OpCos, despite his claim that the Liquidators have been an "obstacle" to the sale since before the Hong Kong Action was commenced.[8] Mot. ¶ 24. Nor has the Trustee refuted the Liquidators' core allegations of fraud.[9] Instead, he has dismissed the Liquidators' claims out of hand as "unfounded," Mot. ¶¶ 3, 14—despite the ample foundation

[8] As early as March 2018, the Liquidators confirmed that they "have no intention of disrupting the sales process and have undertaken no action to do so." They also offered to enter into a cross-border protocol with the Trustee, this Court and the BVI Court to exchange information and, subject to review of that information, to confirm to potential bidders for the Peruvian OpCos the absence of claims against those entities in order to facilitate a sale. The Trustee declined. Copies of this correspondence were annexed as Exhibits A and B to the response to the Trustee's motion to compel the Liquidators to provide notice of applications submitted to the BVI Court and filed at ECF No. 1019.

[9] In his April 2017 status report, the Trustee expressed "hope[]" that the findings of RSM Corporate Advisory ("**RSM**"), a forensic accountant engaged by the Group to investigate the Trade Finance Fraud, would "counter . . . in their entirety" the Liquidators' allegations. Tr.'s Status Report 40, ECF No. 481. Although the Liquidators understand that a draft of RSM's report has existed since at least mid-2017, it has never been finalized.

reflected in the Liquidators' detailed and extensive reports—and focused instead on his claim that the Liquidators' allegations "threaten to taint" the sale process. Mot. ¶ 24.[10]

D. The Trustee Objects to Claims Filed by PAE BVI and Solar Fish, Resulting in the Claims Being Withdrawn With Prejudice

15. On January 13, 2017, PAE BVI and Solar Fish filed proofs of claim against CFG Peru arising out of the Trade Finance Fraud and certain related transfers. On March 29, 2019, the Trustee objected to these claims. His objection made clear that it challenged only the legal sufficiency of the claims and "d[id] not address the merits of the allegations." Tr.'s 2d Omni. Cl. Obj. ¶ 32, ECF No. 1523.

16. Because the claims against CFG Peru were structurally subordinate to the claims asserted by PAE BVI and Solar Fish in the Hong Kong Action, the Liquidators "determined that it would be an inefficient use of time and resources and an unnecessary burden on this Court to engage in litigation . . . in these chapter 11 cases." July 16, 2019 Letter 2, ECF No. 1650. Thus, following a hearing before this Court, and with the Trustee's consent, PAE BVI and Solar Fish withdrew their claims against CFG Peru with prejudice. Stip. & Agreed Order ¶ 1, ECF No. 1690.

17. As a result of the withdrawal of claims by PAE BVI and Solar Fish, neither of those entities currently is a creditor of CFG Peru. And because the other three Hong Kong Plaintiffs (Europaco, Palanga and Zolotaya) did not file proofs of claim against CFG Peru at all, ***none*** of the Hong Kong Plaintiffs currently is a creditor of CFG Peru.

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[10] If proceeds sufficient to satisfy a judgment in the Hong Kong Action are escrowed from any sale of the Peruvian OpCos, the Hong Kong Plaintiffs would be amenable to discussing a release of claims against those entities in connection with the sale. This should alleviate the Trustee's concern over any alleged "taint."

E. The Hong Kong Plaintiffs Assert Claims Against Non-Debtors in Hong Kong Based on the Trade Finance Fraud

18. On April 18, 2019, PAE BVI, Solar Fish and Europaco—as well as two other Group companies that are in BVI liquidation proceedings—filed a lawsuit in Hong Kong asserting claims arising out of the Trade Finance Fraud against seven Ng family members and 11 companies connected to them. Shortly thereafter, on May 10, 2019, the Hong Kong Plaintiffs commenced an action (the "**Hong Kong Action**") before the High Court of the Hong Kong Special Administrative Region, Court of First Instance (the "**Hong Kong Court**"), against CFG Investment S.A.C. ("**CFGI**" or the "**Hong Kong Defendant**").[11]

19. The Hong Kong Action has no connection to the United States or the chapter 11 cases. It does not involve the Trustee, CFG Peru or any of the other Debtors, none of whom are parties. Rather, it involves constructive trust claims asserted by BVI companies (the Hong Kong Plaintiffs) against a non-Debtor Peruvian company (the Hong Kong Defendant) under foreign law and before a foreign court.

20. Under the applicable Practice Directions of the Hong Kong Court, once the writ of summons has been served and the pleadings have closed, the parties will be required to state

[11] The Trustee wrongly suggests that the Hong Kong Plaintiffs have been dilatory in serving CFGI in the Hong Kong Action. Because there is no civil procedure convention in place between Hong Kong and Peru, service must be effected by the Registrar of the Hong Kong High Court through the Peruvian Consulate in Hong Kong. On July 29, 2019, the Hong Kong Registrar confirmed that it had forwarded the writ of summons and related documents to the relevant authorities for onward transmission to Peru. The Hong Kong Plaintiffs are now awaiting confirmation of service on CFGI. However, in recognition of the Trustee's stated desire to expedite the Hong Kong Action, on December 12, 2019, the Hong Kong Plaintiffs requested that CFGI's Hong Kong counsel agree to accept service on behalf of CFGI. No response was received from CFGI or its counsel by close of business in Hong Kong on December 13, 2019.

whether they are willing to participate in mediation and, if not, provide a reasonable explanation as to why not. *See* H.K. Practice Direction 31 ¶ 9, App'x B. If any party unreasonably fails to mediate, the Hong Kong Court may make an order for adverse costs against that party. *Id.* ¶ 4. Accordingly, the Hong Kong Plaintiffs anticipate engaging in mediation with CFGI in Hong Kong at the appropriate juncture.[12]

F. The Trustee Seeks as an Emergency to Compel Mediation of the Hong Kong Action in the United States

21. On December 10, 2019, the Trustee filed the "emergency" Motion seeking to compel mediation of the Hong Kong Action. He did so despite knowing—as he must—that he is not a party to the action for which he seeks to force mediation. In fact, neither CFG Peru nor any other Debtor is a party to the proceeding and, as noted above, the Hong Kong Plaintiffs are not creditors of CFG Peru or otherwise before the Court. In fact, there is no "adversary proceeding, contested matter or other dispute" pending ***before this Court*** that could conceivably be referred to mediation. *Cf.* Bankr. S.D.N.Y. Mediation Procedures ¶ 1.3.

22. Nor is there any real emergency. Despite claiming to have used his "best efforts" to "bring the relevant parties to the table," Mot. ¶ 2, the Trustee offers no explanation for his failure to meaningfully engage with the Liquidators despite knowing since at least April 2017 that proceeds of the Trade Finance Fraud allegedly had been used in the acquisition of Copeinca, *see* Tr.'s Status Report 40, ECF No. 481. And the Trustee offers no excuse for his failure to timely seek mediation in the more than two months since an (unrelated) proposed settlement was

[12] Parties to a Hong Kong proceeding may agree to mediate earlier than is required under the applicable Practice Directions. The Hong Kong Plaintiffs would be willing to confer in good faith with the Hong Kong Defendant to discuss whether an earlier mediation in Hong Kong would be appropriate.

presented to the Court for approval, despite relying on that motion as a basis for claiming that time is of the essence. *See* Mot. ¶ 33 ("[T]ime is of the essence for the Court to appoint the Mediator now, before estate resources are wasted on protracted litigation and discovery efforts relating to the . . . PAIH Settlement Motion . . . .").

23. Faced with no nexus between these chapter 11 cases and the Hong Kong Action that would grant this Court authority to compel mediation, and no emergency justifying the hasty entry of such an order to bring the Hong Kong Plaintiffs to the United States and prevent them from vindicating their rights overseas, the Trustee resorts to little more than unsubstantiated rhetoric attacking the Hong Kong Plaintiffs' claims and allegations that the Liquidators have "clouded" and "threatened" the sale of the Peruvian OpCos. *See* Mot. ¶¶ 3, 14 (describing claims as "unfounded"), 8 ("dubious"), 28 ("invalid" and "dubious"), 14 (stating that claims have "clouded" sale efforts), 24 ("threatened to taint" sale process).[13]

OBJECTION

24. This Court cannot order mediation concerning the Hong Kong Action because the Court has no jurisdiction over it. A bankruptcy court's jurisdiction is "grounded in, and limited by," section 1334 of title 28 of the United States Code. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). As relevant here, that statute conveys jurisdiction over matters that are "related to a case under title 11." An action is "related to" a case under title 11 only if "its outcome might

[13] While perhaps inconvenient for the Trustee, the Liquidators' investigation and pursuit of claims arising out of the Trade Finance Fraud has been appropriate. The Liquidators are independent officers of the BVI Court by which they were appointed. They have not lightly made allegations of a multiyear, multibillion-dollar fraud on the scale and scope of the Trade Finance Fraud. To the contrary, they have extensively and methodically reviewed and analyzed thousands of pages of financial records relating to the Group and the agent companies in coming to their conclusions, and have extensively documented their efforts and their findings in the reports they have issued.

have [a] 'conceivable effect' on the bankrupt estate." *Publicker Indus. Inc. v. United States (In re Cuyahoga Equip. Corp.)*, 980 F.2d 110, 114 (2d Cir. 1992); *see also Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). Stated differently, a proceeding is only within the Court's "related to" jurisdiction if its outcome "could alter the debtor's rights, liabilities, options or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Pacor*, 743 F.2d at 994; *accord Celotex*, 514 U.S. at 308, n.6 ("[B]ankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.").

25. The Hong Kong Action clearly is not related to any of these cases. As noted above, the action involves only parties that are not before this Court—the (non-Debtor) Hong Kong Plaintiffs and (non-Debtor) Hong Kong Defendant. It implicates no assets of the Debtors' estates, arises entirely under foreign law and is pending before a foreign court. There is no "conceivable effect" the action could have on the administration of the Debtors' estates—no matter its outcome, it cannot alter the Debtors' "rights, liabilities, options or freedom of action" or "in any way impact[] upon the handling and administration of the bankrupt estate." *Pacor*, 743 F.2d at 994. This Court therefore lacks jurisdiction to order mediation of claims pending in the Hong Kong Action.[14]

[14] The cases on which the Trustee relies are distinguishable in that they involved mediation among parties that were before the court. *See In re SunEdison, Inc.*, No. 16-10992 (SMB) (Bankr. S.D.N.Y. Feb. 6, 2017), ECF No. 2406 (mediation among debtors, creditor and asset purchaser); *In re Samson Resources Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Dec. 5, 2016), ECF No. 1716 (mediation among debtors, creditors' committee and specific creditors); *In re LightSquared Inc.*, No. 12-12080 (SCC) (Bankr. S.D.N.Y. May 28, 2014), ECF No. 1557 (mediation among debtors, creditors, equityholders and parties to a pending adversary proceeding); *In re Cengage Learning Inc.*, No. 13-44106 (ESS) (Bankr. E.D.N.Y. Sept. 25, 2013), ECF No. 518 (mediation among "the Debtors' major stakeholders"); *see also Lucas v.*

26. The only connection between the Hong Kong Action and these cases is CFG Peru's equity interest in the Hong Kong Defendant. Although the Trustee tries to suggest a more substantial link by attempting to characterize the Hong Kong Action as "merely crystalliz[ing]" a "years-long shadow cast by the [Liquidators]" over efforts to sell the Peruvian OpCos, Mot. ¶ 24, this provides no basis for jurisdiction. Courts have squarely rejected the notion that a debtor's equity interest in a non-filing subsidiary is sufficient to create "related to" jurisdiction over litigation involving the subsidiary. *See, e.g.*, *Tower Automotive Mexico, S. de R.L. de C.V. v. Grupo Proeza, S.A. de C.V. (In re Tower Automotive, Inc.)*, 356 B.R. 598, 601 (Bankr. S.D.N.Y. 2006) (potential "diminution in value" of a debtor's investment in the stock of its non-debtor subsidiary "is not enough to provide [the bankruptcy court] with jurisdiction over a dispute between . . . [the] non-filing subsidiary[] and a third party"); *Equity Broad. Corp. v. Shubert (In re Winstar Commc'ns, Inc.)*, 284 B.R. 40, 51 (Bankr. D. Del. 2002) (suit against a non-filing subsidiary "may have an effect on the ultimate value with the estate receives for the stock it owns, but it does not alter the estate's rights, liabilities, options or freedom of action"). As explained by Judge Gropper in *Tower Automotive*, litigation involving a non-filing subsidiary "only indirectly impacts a bankruptcy estate . . . by affecting the value of one of its assets." 356 B.R. at 602. If the subsidiary loses the litigation, the estate will "still own the stock . . . and the fact that it may be worth less [as a result of the litigation] . . . does not create jurisdiction that [the bankruptcy court] would not otherwise have." *Id.*

27. Even if this Court could order mediation of the Hong Kong Action, the Trustee has failed to explain why it should do so in derogation of the Hong Kong Court's province to

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Planning Board, 7 F. Supp. 2d. 310, 320 (S.D.N.Y. 1998) (courts are obliged to craft settlements "in lawsuits ***brought before them***" (emphasis added)).

supervise matters that are pending before it. American courts must "take care to demonstrate due respect" for sovereign interests, *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 546 (1987), and under principles of international comity should "decline to exercise jurisdiction in a case 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). Haling the Hong Kong Plaintiffs into the United States and compelling them to mediate before a bankruptcy judge with no expertise in Hong Kong law would fly in the face of well-established principles of international comity—especially given the Hong Kong Court's interest in enforcing its Practice Directions regarding mediation of cases that are pending before it. *See Dragon Capital Partners L.P. v. Merrill Lynch Capital Servs. Inc.*, 949 F. Supp. 1123, 1129 (S.D.N.Y. 1997) (deferring to Hong Kong court proceedings and noting that "Hong Kong is a 'sister common law jurisdiction with procedures akin to our own'" (citation omitted)); *see also In re Axona Int'l Credit & Commerce Ltd.*, 88 B.R. 597, 611 (Bankr. S.D.N.Y. 1988) ("Hong Kong law is not repugnant to our ideas of justice, and is inherently fair and regular. As a result, comity should be accorded . . . ." (citation omitted)).

28. Because the Trustee has failed to establish that this Court has authority to compel mediation of the Hong Kong Action, or that it should do so given the due respect that must be given to the interests of the Hong Kong Court, the Motion should be denied.

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CONCLUSION

For the foregoing reasons, the Motion should be denied.

Dated: December 13, 2019
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