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

_____	x	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. _____ ( )
	:	
Debtors.	:	Joint Administration Pending
	:	
	:	
_____	x	

**DEBTORS’ MOTION FOR AN ORDER ENFORCING  
SECTIONS 362, 365(e)(1) AND 525 OF THE BANKRUPTCY CODE**

Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), enforcing and restating the automatic stay, *ipso facto* and antidiscrimination provisions under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). The facts and circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Sean*

<sup>1</sup> The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.



*Deason in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "Deason First Day Declaration") and the *Declaration of Scott Tandberg in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "Tandberg First Day Declaration") and together with the Deason First Day Declaration, the "First Day Declarations"). In further support of the Motion, the Debtors respectfully state as follows:

### **Background**

1. Garrett Motion Inc. is a Delaware corporation established in 2018, with its headquarters located in Rolle, Switzerland. The Debtors design, manufacture and sell highly engineered turbocharger, electric-boosting and connected vehicle technologies.

2. On the date hereof (the "Petition Date"), each of the Debtors filed with the Court a voluntary petition for relief under the Bankruptcy Code. Each Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion with the Court pursuant to rule 1015 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking joint administration of the Debtors' cases (the "Chapter 11 Cases"). No creditors' committee has been appointed in these Chapter 11 Cases.

3. Additional factual background relating to the Debtors' businesses and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declarations.

### **Jurisdiction**

4. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 362, 365(e)(1) and 525 of the Bankruptcy Code.

**Relief Requested**

5. By this Motion, the Debtors request entry of the Order enforcing and restating the automatic stay, *ipso facto* and antidiscrimination provisions of the Bankruptcy Code.

**Basis for Relief**

**I. Restating the Automatic Stay, Antidiscrimination, and *Ipsa Facto* Provisions of the Bankruptcy Code Is Appropriate Where Debtors Conduct Business Worldwide.**

6. The Debtors are a leading provider of vehicle technologies for original equipment manufacturers and the aftermarket, serving customers worldwide. As a result, the Debtors have many foreign creditors, contract counterparties and other parties-in-interest in various countries who may not be well versed in the protections and restrictions of the Bankruptcy Code. Some of these creditors do not transact business on a regular basis with companies that have filed for chapter 11, or are unfamiliar with the scope of a debtor-in-possession's authority to conduct its business. These creditors may be unfamiliar with the operation of the automatic stay and other provisions of the Bankruptcy Code. Accordingly, the Debtors submit that such circumstances warrant an order apprising parties—especially non-U.S. customers, creditors and vendors—of sections 362, 365(e)(1) and 525 and the protections provided thereby.

7. The filing of these Chapter 11 Cases triggered an automatic stay under section 362 of the Bankruptcy Code that enjoins all persons and all governmental units from, among other things: (a) commencing or continuing a judicial, administrative or other proceeding against any of the Debtors that was or could have been commenced before these Chapter 11 Cases were filed or recovering upon a claim against any of the Debtors that arose before the commencement of these Chapter 11 Cases or (b) taking any action to collect, assess or recover a

claim against any of the Debtors that arose before the commencement of these Chapter 11 Cases. *See* 11 U.S.C. § 362.

8. Section 365(e)(1) of the Bankruptcy Code prohibits, subject to certain limited exceptions, all parties to executory contracts or unexpired leases with the Debtors from, among other things, terminating or modifying any such contract, lease, or any right or obligation under such contract or lease, at any time after the commencement of these Chapter 11 Cases solely because of a provision in such contract or lease that is conditioned on: (a) the insolvency or financial condition of the Debtors at any time before the closing of these Chapter 11 Cases, (b) the commencement of these Chapter 11 Cases or (c) the appointment of a trustee. *See* 11 U.S.C. § 365(e)(1).

9. Section 525 of the Bankruptcy Code prohibits and enjoins governmental units, with certain limited exceptions not applicable to these Chapter 11 Cases, from, among other things, denying, revoking, suspending or refusing to renew any license, permit, charter, franchise, or other similar grant to, condition such a grant on, or discriminate with respect to such a grant against, the Debtors solely because the Debtors: (a) are debtors under the Bankruptcy Code, (b) may have been insolvent before the commencement of these Chapter 11 Cases or (c) may be insolvent during the pendency of these Chapter 11 Cases. *See* 11 U.S.C. § 525.

10. The injunctions contained in sections 362, 365(e)(1) and 525 of the Bankruptcy Code are self-executing. They constitute fundamental debtor protections which help provide the Debtors with the “breathing spell” necessary to enable a smooth and orderly transition into chapter 11. *See, e.g.*, H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 340 (1977); *Shugrue v. Air Line Pilots Ass’n, Int’l (In re Ionosphere Clubs, Inc.)*, 922 F.2d 984, 989 (2d Cir.

1990) (citations omitted); *Variable-Parameter Fixture Dev. Corp. v. Morpheus Lights, Inc.*, 945 F. Supp. 603, 608 (S.D.N.Y. 1996) (“[Section] 362 is meant to give ‘the debtor a breathing spell from his creditors [and permit] the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.’”) (citations omitted).

11. The protections in these provisions extend to protect a debtor’s property and contracts wherever they are located and by whomever held. *See SIPC v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Secs. LLC)*, 474 B.R. 76, 84 (S.D.N.Y. 2012) (upholding extraterritorial enforcement of the automatic stay and injunction barring foreign creditor’s lawsuit); *Nakash v. Zur (In re Nakash)*, 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996) (“[B]ased upon the applicable Code sections [and] other indicia of congressional intent, . . . the automatic stay applies extraterritorially.”); *In re McLean Indus.*, 74 B.R. 589, 601 (Bankr. S.D.N.Y. 1987) (“The automatic stay applies extraterritorially.”). Accordingly, any actions by third parties to modify or terminate contracts or enforce their terms against the Debtors are prohibited absent court approval. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (holding that while the debtor may enforce the terms of the contract against the creditor, the creditor is “precluded from . . . enforcing the contract terms” of an executory contract prior to the assumption by the debtor); *see also U.S. Postal Serv. v. Dewey Freight Sys., Inc.*, 31 F.3d 620, 624 (8th Cir. 1994) (“After a debtor commences a Chapter 11 proceeding, but before executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, *enforceable by the debtor but not against the debtor.*”) (emphasis in original). Thus, a third party must continue to perform under an executory contract until it is assumed or rejected.

12. Notwithstanding the fundamental, self-executing and global nature of these statutory protections, not all parties affected or potentially affected by the commencement of a chapter 11 case may be aware of their existence. Debtors in bankruptcy often must advise third parties of the existence and effect of sections 362, 365(e)(1) and 525 of the Bankruptcy Code. Occasionally, a chapter 11 debtor has to initiate adversary proceedings in the bankruptcy court to enforce these protections. To avoid such unnecessary actions, and to provide notice to parties unfamiliar with the Bankruptcy Code of the scope and effect of the section 362 automatic stay, the section 365(e)(1) prohibition against enforcement of *ipso facto* clauses and the section 525 antidiscrimination provision, the Debtors respectfully request the Court enter the Order embodying and restating those provisions.

13. Such an order is particularly appropriate here. The Debtors conduct business with parties in jurisdictions worldwide, many of whom are unfamiliar with the U.S. bankruptcy process and the protections afforded to debtors. In addition, the Debtors and their property are subject to the rules and regulations of numerous governmental authorities, including those in foreign jurisdictions, that may not be familiar with United States bankruptcy law and that, absent such an order, may take precipitous action against the Debtors or their property.

14. The Order, by restating the safeguards in sections 362, 365(e)(1) and 525 of the Bankruptcy Code, would help protect the Debtors from unwitting violations of these crucial provisions. The granting of the relief requested will help ensure that (a) the non-debtor parties to unexpired leases and executory contracts with the Debtors will continue to perform and will not unilaterally terminate their contracts, (b) creditors do not seize the Debtors' assets, impose liens or take any other action in violation of the automatic stay and (c) foreign governmental authorities do not deny, revoke or suspend any licenses or permits solely because

the Debtors are in chapter 11. It would also spare the Debtors from the burden of commencing adversary proceedings to enforce the protections automatically provided by the Bankruptcy Code. Consequently, the Order will assist the Debtors in effecting a prompt and orderly reorganization.

15. Relief similar to that requested herein has previously been granted by courts in this district in similar Chapter 11 Cases. *See, e.g., LATAM Airlines Group S.A.* 20-11254 (JLG) (May 28, 2020), D.I. 50; *Avianca Holdings S.A.*, 20-11133 (MG) (May 12, 2020), D.I. 46; *Pacific Drilling S.A.*, 17-13193 (MEW) (Nov. 15, 2017), D.I. 42; *Ezra Holdings Limited*, 17-22405 (RDD) (Mar. 27, 2017), D.I. 28; *Ultrapetrol (Bahamas) Limited*, 17-22168 (RDD) (Feb. 10, 2017), D.I. 55; *Toisa Limited*, 17-10184 (SCC) (Jan. 30, 2017), D.I. 14; *Primorsk Int'l Shipping Ltd.*, 16-10073 (MG) (Jan. 21, 2016), D.I. 32; *In re Global Maritime Investments Cyprus Ltd.*, 15-12552 (SMB) (Sept. 21, 2015), D.I. 41.

### Notice

16. No creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to Citibank, N.A., as administrative agent under the DIP credit facility, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Ray C. Schrock, P.C. (ray.schrock@weil.com) and Candace M. Arthur, Esq. (candace.arthur@weil.com); (c) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the Debtors' prepetition credit facility, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Kristopher M. Hansen (khansen@stroock.com), Jonathan D. Canfield (jcanfield@stroock.com), Joanne Lau (jlau@stroock.com) and Alexander A. Fraser (afraser@stroock.com); (d) counsel to the ad hoc group of lenders under the Debtors' prepetition

credit facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Steven A. Domanowski (sdomanowski@gibsondunn.com) and Matthew G. Bouslog (mbouslog@gibsondunn.com); (e) counsel to the ad hoc group of bondholders, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Matthew M. Roose (matthew.roose@ropesgray.com) and Mark I. Bane (mark.bane@ropesgray.com); (f) counsel to KPS Capital Partners, LP, as stalking horse bidder, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick (brian.resnick@davispolk.com) and Joshua Y. Sturm (joshua.sturm@davispolk.com); (g) the parties identified on the Debtors' consolidated list of 30 largest unsecured creditors; and (h) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

**No Prior Request**

17. No prior motion for the relief requested herein has been made to this or any other Court.



**Conclusion**

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, and (b) grant such other and further relief as is just and proper.

Dated: September 20, 2020  
New York, New York

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*Proposed Counsel to the Debtors*

**EXHIBIT A**

**Proposed Order**

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

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In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. ____ ( )
	:	
Debtors.	:	Jointly Administered
	:	
	:	
<hr/>		x

**ORDER ENFORCING SECTIONS 362, 365(e)(1) AND 525  
OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”)<sup>2</sup> of Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), for entry of an order (this “Order”) enforcing and restating the automatic stay, *ipso facto* and antidiscrimination provisions under sections 362, 365(e)(1) and 525 of the Bankruptcy Code; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), and that, except as otherwise ordered herein, no other or further notice is necessary; and any objections (if any) to the Motion having been

<sup>1</sup> The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are stayed, restrained and enjoined from:
  - a. commencing or continuing any judicial, administrative, or other action or proceeding against the Debtors, including the issuance or employment of process, that was or could have been initiated before the Debtors' Chapter 11 Cases commenced;
  - b. enforcing, against the Debtors or their estates, a judgment obtained before the commencement of these Chapter 11 Cases;
  - c. collecting, assessing, or recovering a claim against the Debtors that arose before the commencement of these Chapter 11 Cases;
  - d. taking any action to obtain possession of property of the estates or to exercise control over property of the Debtors' estates;
  - e. taking any action to create, perfect, or enforce any lien against property of the Debtors' estates;
  - f. taking any action to create, perfect or enforce any lien against property of the Debtors, to the extent that such lien secures a claim that arose before the commencement of these Chapter 11 Cases; and
  - g. offsetting any debt owing to the Debtors that arose before the commencement of these Chapter 11 Cases against any claim against the Debtors.

3. All persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables, and other or similar law enforcement officers and officials are stayed, restrained and enjoined from in any way seizing, attaching, foreclosing upon, levying against, or in any other way interfering with any and all property of the Debtors and the Debtors' estates, wherever located.

4. Pursuant to section 365(e)(1) of the Bankruptcy Code, all persons (including individuals, partnerships, corporations and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of these Chapter 11 Cases solely because of a provision in such contract or lease that is conditioned on:

- a. the insolvency or financial condition of the debtor at any time before the closing of these Chapter 11 Cases;
- b. the commencement of these Chapter 11 Cases; or
- c. the appointment of a trustee in these Chapter 11 Cases.

5. This Order shall not affect (a) the substantive rights of any party or the availability of any of the exceptions contained in sections 362(b) and 365(e)(1) of the Bankruptcy Code or (b) the right of any party-in-interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or with respect to an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

6. Pursuant to section 525 of the Bankruptcy Code, all foreign and domestic governmental units are prohibited and enjoined from (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to, (b) placing conditions upon such a grant to or (c) discriminating with respect to such a grant against any of

the Debtors (or another person with whom the Debtors have been associated) solely because any of the Debtors is a debtor under the Bankruptcy Code, or may have been insolvent before or during these Chapter 11 Cases.

7. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

8. The requirements set forth in Local Rule 9013-1(b) are satisfied.

9. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

10. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Order.

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

\_\_\_\_\_  
United States Bankruptcy Judge