**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| | ) | Chapter 11 |
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| AMBIPAR EMERGENCY RESPONSE, | ) | Case No. 25-90524 (ARP) |
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| Debtor.[1] | ) | |
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**THE AD HOC GROUP OF FINANCIAL CREDITORS' OBJECTION TO THE SUSPENSION MOTION**

The Ad Hoc Group of Financial Creditors (the "**Ad Hoc Group**[2]") submits this objection (the "**Objection**")[3] to the *Debtor Parties' Motion to Suspend the Chapter 11 Case* [Docket No. 254] (the "**Suspension Motion**") filed by Ambipar Emergency Response ("**AER**" or the "**Debtor**").[4]

## PRELIMINARY STATEMENT[5]

1. AER voluntarily availed itself of the protections of chapter 11 in the United States. For the past ten months, it has benefited from those protections, including the worldwide automatic

[1] The last four digits of the Debtor's taxpayer identification number are 0623. The Debtor's address is P.O. Box 10008, Willow House, Cricket Square, Grand Cayman, KY1-1001, Cayman Islands.

[2] For purposes of this Objection, the Ad Hoc Group is composed of the following participants: (i) Banco ABC Brasil S.A., (ii) Banco do Brasil S.A., (iii) Fundo De Investimento Em Direitos Creditórios Pcg-Brasil Multicarteira, (iv) Banco Bradesco S/A, (v) Banco Santander S.A., and (vi) Banco Sumitomo Mitsui Brasileiro S/A.

[3] The Ad Hoc Group files this Objection under seal without filing a separate motion under Bankruptcy Local Rule 9037-1 pursuant to the *Stipulation and Agreed Confidentiality and Protective Order Regarding Production of Documents*, [Docket No. 160] entered by this Court on March 13, 2026.

[4] In support of this Objection, the Ad Hoc Group relies on the *Declaration of Andrew Costello in Support of the Ad Hoc Group of Financial Creditors' Objection to the Suspension Motion* (the "**Costello Declaration**") filed contemporaneously herewith.

[5] Capitalized terms not otherwise defined in this Preliminary Statement shall have the meaning ascribed to them in the Suspension Motion or elsewhere in this Objection, as applicable.





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stay, but it has ignored its fiduciary duties as a debtor-in-possession. While a debtor-in-possession, and without seeking Court approval under section 363 of the Bankruptcy Code, AER (i) obtained the Substantive Consolidation Order consolidating all of its assets and liabilities with its fellow RJ Debtors, (ii) directed its operating subsidiaries to pay the professional fees of the Ad Hoc Group of Green Notes, and (iii) executed the RSA obligating itself to pursue a restructuring transaction in another jurisdiction. Now it asks this Court to ignore those transgressions and free AER from the duties as a trustee, leaving creditors like the members of the Ad Hoc Group without any estate fiduciary. AER does this for no reason other than the chapter 11 process no longer serves its desire to benefit its ultimate shareholder.

2. AER has used its stay in chapter 11 to negotiate a transaction with certain preferred stakeholders, but it cannot implement that transaction through the chapter 11 case. Among other things, the RSA contemplates a restructuring that:

- provides a full recovery to the controlling shareholder in violation of the absolute priority rule;
- ignores the prohibition on disparate treatment by providing near full recoveries to the holders of Green Notes (including payment of professional fees) and virtually nothing to holders of pari passu unsecured claims; and
- abandons all potential estate causes of action that AER may have under chapter 5 of the Bankruptcy Code or otherwise against affiliates and insiders before their value has been determined.

AER now wants to suspend its chapter 11 case to see if it can implement a foreign restructuring plan that violates both its duties to its estate and fundamental principles of the Bankruptcy Code.

3. In making this extraordinary request, AER declines even to articulate what suspension means. The proposed order appears to contemplate that the chapter 11 case be frozen, with the only activity relating to final fee applications. AER asks for a clear path to approve its RJ Plan in Brazil without creditor interference (or *creditor protections*) in the pending chapter 11

case. But AER and its affiliated RJ Debtors have not yet filed, let alone obtained approval of, any RJ Plan consistent with the RSA. Nor has this Court recognized the RJ Proceeding as a foreign proceeding for AER or determined whether to enforce any foreign restructuring plan. The Suspension Motion puts the cart before the horse, and the Court should not approve AER's early exit from chapter 11.

4. Instead, the Court should require AER to remain in chapter 11 and comply with its fiduciary duties—including by seeking Court authority for non-ordinary course transactions. There is nothing prohibiting the Debtor from pursuing a restructuring plan in the RJ Proceeding and subsequently returning to this Court for approval under the Bankruptcy Code if that restructuring is successful in Brazil. Indeed, AER elected to proceed with two plenary restructuring cases by commencing both this chapter 11 case and the RJ Proceeding at the same time. Having made that choice, it must comply with the requirements of the Bankruptcy Code.

5. There are several additional reasons for this Court to deny the Suspension Motion. *First*, the Suspension Motion is predicated upon a clear abdication of the Debtor's fiduciary duties. Conflicted directors who benefit from a release from the Green Noteholders and the abandonment of estate claims and causes of action against them [redacted] The Board did not know that its duties also [redacted]. Nor did the Board understand the value of the estate's potential claims and causes of action against insiders—claims that, if pursued, would benefit *all* creditors. The independent director tasked with investigating those claims [redacted] not complete his work and had no role in negotiating the RSA. AER ignores the consequences of the Substantive Consolidation Order in the chapter 11 case, neglected to timely inform the Court of that order, and refused to provide creditors of the substantively consolidated RJ Debtors basic

notice in the chapter 11 cases.[6] The RSA commits estate property to pay the Preferred Creditors and their advisors while leaving other similarly situated creditors with limited or no recovery. Even before executing the RSA, during the pendency of this chapter 11 case, the Debtor caused [redacted] bank account) to the Preferred Creditors' advisors, all without Court approval. Even if the Debtor could satisfy its burden under section 305(a)(2) of the Bankruptcy Code to support its requested suspension (it cannot), the decision is entirely within the discretion of this Court. The Court should decline to exercise that discretion.

6. *Second*, there is no basis to suspend the chapter 11 case under section 305(a)(2) of the Bankruptcy Code because the Court has not yet recognized any foreign proceeding—an express requirement of 305(a)(2). For the reasons set forth in the Ad Hoc Group's separate objection to AER's request for recognition filed in the chapter 15 case, the Court should not grant recognition.[7] But even if it does, AER still has the burden to show that the purposes of chapter 15 would be best served by suspension. It cannot do so, as suspension would be inconsistent with section 1501(a)(3) of the Bankruptcy Code, which states the objective of "fair and efficient administration of cross-border insolvencies that protects the interests of all creditors." 11 U.S.C. §

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[6] *See Limited Objection of the Ad Hoc Group to Debtors' Motion for Entry of an Order (I) Extending Time to File (A) Schedules of Assets and Liabilities and Schedules of Executory Contacts and Unexpired Leases, and (B) Statements of Financial Affairs, (II) Modifying Requirement to File List of Equity Security Holders, (III) Extending Time to File, and Modifying Frequency of, Reports under Bankruptcy Rule 2015-3, (IV) Authorizing Redacting of Certain Personally Identifiable Information of Natural Persons, and (V) Granting Related Relief* [Docket No. 58] ¶ 1.

[7] Among other reasons, recognition should be denied because neither COMI nor establishment are in Brazil, and recognizing a process to implement the RSA transaction would be manifestly contrary to U.S. public policy. *See In re Geden Holdings, Ltd.*, 674 B.R. 732 (Bankr. S.D. Tex. 2025) (dormant holding company could demonstrate neither COMI nor establishment in Malta merely through incorporation or historical subsidiary activity), *aff'd*, *Balzan v. Advantage Award Shipping, LLC (In re Geden Holdings Ltd.)*, No. 25-90138, No. H-25-4308, 2026 WL 1949532 (S.D. Tex. July 6, 2026); *see also In re Toft*, 453 B.R. 186, 189 (Bankr. S.D.N.Y. 2011) (denying recognition under the circumstances although there was "no question that German and English insolvency proceedings are ordinarily entitled to recognition in this country").

1501(a)(3). The Debtor's request to suspend the chapter 11 case to pursue a transaction that favors the shareholder and Preferred Creditors over pari passu creditors cannot be reconciled with that express purposes of chapter 15.

7. *Third*, the Debtor has not moved under section 305(a)(1) of the Bankruptcy Code and cannot do so now. Regardless, there is no basis to suspend the chapter 11 case under section 305(a)(1) of the Bankruptcy Code because suspension does not serve the best interest of "all creditors."[8] Suspension serves only the interest of the shareholder and the hand-picked Preferred Creditors. The members of the Ad Hoc Group and similarly situated creditors would lose the protections of the chapter 11 case. While AER may ignore these protections, the Court should not.

8. If the Court is inclined to grant the Suspension Motion, it should condition relief on an order that ensures creditors are not prejudiced. Suspension should not excuse the Debtor's fiduciary obligations or allow the Debtor to benefit indefinitely from the automatic stay. The Court should retain jurisdiction to resolve matters related to the proofs of claim filed by the members of the Ad Hoc Group. Suspension should not allow the Debtor to reap the benefits of chapter 11 without meeting its obligations.

## OBJECTION

### I. The Suspension Motion Fails Because it is Predicated Upon an Abdication of Fiduciary Duties and Statutory Obligations of a Debtor-In-Possession

9. In executing the RSA and seeking to suspend the chapter 11 case, AER has breached its fiduciary duties as a trustee to its estate and stakeholders. The Court should not exercise its discretion to excuse the Debtor's failure to satisfy its duties and obligations in chapter

[8] The Debtor has not moved under section 305(a)(1) of the Bankruptcy Code, and the Ad Hoc Group has not had an opportunity to take discovery on facts relevant to the Debtor's burden under that subsection. The Court should not consider any request for suspension under section 305(a)(1) of the Bankruptcy Code absent proper notice.

11.

### A. The Members of the Ad Hoc Group Benefit from the Debtor's Fiduciary Duties and Statutory Obligations

10. In a chapter 11 case, a debtor-in-possession steps into the shoes of a trustee, and directors of the debtor assume the same fiduciary duties. *See* 11 U.S.C. §§ 1101, 1106-1108; *In re Houston Reg'l Sports Network, L.P.*, 505 B.R. 468, 481 (Bankr. S.D. Tex. 2014) ("In a chapter 11 case in which no trustee is appointed, the fiduciary duties of the Estate rest with a debtor-in-possession's directors."); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985) (citing *Wolf v. Weinstein*, 372 U.S. 633, 649-52 (1963)); *In re Devine*, 131 B.R. 952, 956 (Bankr. S.D. Tex. 1991) (finding the Bankruptcy Code "assigns a Chapter 11 debtor-in-possession the fiduciary rights and duties of a trustee"); *Matter of Hughes*, 704 F.2d 820, 822 (5th Cir. 1983) ("A debtor-in-possession, in his capacity as such, occupies the shoes of a trustee in every way . . . . As a debtor-in-possession, he both enjoys the rights and must fulfill the duties of a trustee.").

11. A chapter 11 debtor's fiduciary duties are broad and include, (i) a duty of care, which requires the debtor to conserve the assets of the estate and to maximize distributions to creditors, and (ii) a duty of loyalty, which requires the debtor to place the interests of the estate above its personal interests and to operate the estate impartially for the benefit of *all* creditors. *See In re Bowman*, 181 B.R. 836, 843 (Bankr. D. Md. 1995) ("The fiduciary duties include a duty of care to protect the assets, a duty of loyalty and a duty of impartiality."); *In re Sudano, Inc.*, 391 B.R. 678, 690 (Bankr. E.D.N.Y. 2008) (holding that the trustee "fulfilled her fiduciary duty to maximize the value of estate assets" by properly managing the assets of the estate to "pay in full all allowed secured claims, allowed priority claims and general unsecured claims, without interest."); *In re Schepps Food Stores, Inc.*, 160 B.R. 792, 798 (Bankr. S.D. Tex. 1993) (finding

that a debtor "on the one hand, must act in the best interests of the corporation and shareholders, and on the other hand, must act in the best interests of the estate, shareholders and creditors, collectively (directors qua trustee)").

12. The Debtor's duties run to all creditors, including the members of the Ad Hoc Group. At the outset of the RJ Proceeding, the RJ Debtors, including AER, sought an order consolidating their assets and liabilities (the "**Substantive Consolidation Order**"). *See* Substantive Consolidation Order, attached as **Exhibit 1** to the Costello Declaration. The Substantive Consolidation Order found a "clear[] and objective[] demonstrat[ion of] the control exercised by the holding company over various companies within the group, as well as the integration of its governance" and "interconnection and confusion between assets and liabilities." *Id.* at 20. The consequences of the Substantive Consolidation Order under Brazilian law are straightforward: (i) it gives creditors of any of the RJ Debtors prepetition claims against all of the RJ Debtors; (ii) it pools the assets of all of the RJ Debtors and makes them available to treat all creditors, ratably and in accordance with their priority; and (iii) it gives creditors of all RJ Debtors the right to vote on the Debtor's plan. *See Declaration of Sheila Christina Neder Cerezetti Pursuant to 28 U.S.C. § 1746 in Support of Ad Hoc Group of Financial Creditors' Emergency Motion to Permit Filing of Proofs of Claim After Bar Date* [Docket No. 225] at ¶ 23-24. This effect is not just procedural. *See Butner v. United States*, 440 U.S. 48, 54-57 (1979) (holding that property interests are created and defined by applicable non-bankruptcy law). The Debtor's own Brazilian law declarant testified that [redacted] G. Salgueiro Dep. Tr. (Aug. 13, 2026) at 41:8-43:3, 62:6-64:25. excerpts of which are

attached as **Exhibit 2** to the Costello Declaration. In addition, the judicial administrator was required to amend the creditor list in the RJ Proceeding to add all creditors of the Ambipar Group, including the members of the Ad Hoc Group.[9] *See Notice of Filing of Certified Translations* [Docket No. 265] at Ex. D (Amended Creditor Matrix). The Debtor is in fact relying on the Substantive Consolidation Order in connection with the RJ Plan that it plans to solicit per the RSA, and should be estopped from taking an inconsistent position as to its consequences in this chapter 11 case.

**B. The Debtor, Through its Board, Has Breached Its Fiduciary Obligations**

13. The Board has violated its fiduciary duties in several respects. *First*, the Board has prioritized the holders of the Green Notes (the "**Preferred Creditors**") and the controlling shareholder over all other creditors, despite its fiduciary obligation to act impartially for the benefit of *all* creditors. This is clear from the face of the RSA, which contemplates $50 million in Fixed Payments to the steering committee of the Preferred Creditors, issuing $925 million of New Secured Notes in nearly full repayment of the Green Notes, and payment of professional fees. [RSA 4(t); Term Sheet, D-1, D-3]. The Board may not even understand the scope of its duties. *See* T. Silva Dep. Tr. (Aug. 5, 2026) at 101:4-11 ("[redacted]."); D. Mack Dep. Tr. (Aug

[9] Even if AER disputes the claims asserted by the members of the Ad Hoc Group, a disputed creditor is still a creditor under the Bankruptcy Code. Under 11 U.S.C. § 101(10)(A), a creditor is defined as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." A claim is defined by 11 U.S.C. § 101(5)(A) as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, ***disputed***, undisputed, legal, equitable, secured, or unsecured." (emphasis added). Therefore, the holder of a disputed claim against the debtor is a creditor.

6, 2026) 50:4-10 ("[redacted] *id.* at 49:5-8 ([redacted]).[10] But the Board's ignorance regarding the scope of its duties is not an excuse for its breach.

14. *Second*, the Board approved the RSA before completing the investigation of estate claims and causes of action (including claims against insiders involved in the RSA negotiations). Such claims may be a significant source of value for the benefit of *all* creditors. *See In re Kendavis Indus. Int'l, Inc.*, 91 B.R. 742, 759 (Bankr. N.D. Tex. 1988) (explaining that all property and causes of action of the debtor are estate property upon filing). David Mack, the independent director of the Board, was specifically tasked with "[redacted]." *See* AMBI-00010104 (October 27, 2025 Board Minutes), attached as **Exhibit 5** to the Costello Declaration. Mr. Mack testified [redacted]" D. Mack Dep. Tr. at 21:16-22:7. Those letters [redacted]

[10] Relevant excerpts of the deposition transcripts of Messrs. Silva and Mack are attached as **Exhibit 3** and **Exhibit 4** to the Costello Declaration.

[redacted] *See* AER-SC_00000121-162 (Opportunity's Letters to AER Board), attached as **Exhibit 6** to the Costello Declaration. [redacted] *See* Exhibit 6 (Opportunity's Letters to AER Board); AMBI-00014552 at Ex. A (AHG Letter to the Independent Director), attached as **Exhibit 7** to the Costello Declaration. Mr. Mack [redacted] *See* D. Mack Dep. Tr. at 72:23-73:2; 73:13-16.

15. [redacted]. The full Board in fact was only involved after the fact. *See id.* at 74:5-9. Instead, a [redacted] *See* AMBI-00016047 (July 15, 2026 Board Meeting Minutes), attached as **Exhibit 8** to the Costello Declaration; T. Silva Dep. Tr. (Aug. 5, 2026) at 86:6-13; 65:23-25. Mr. Silva testified that there was [redacted]. *See* T. Silva Dep. Tr. at 77:3-7 - 84:14-21. This process (or lack thereof) cannot be reconciled with a proper exercise of fiduciary duties.

16. *Third*, the RSA transaction fails to maximize value of the estate. *See In re Texas Stand. Oil Co.*, No. 08-34031-H4-11, 2008 WL 5479114, at *8 (Bankr. S.D. Tex. Nov. 12, 2008) ("Because the Debtor is in bankruptcy, it has fiduciary duties to its creditors to maximize the value of its bankruptcy estate."). In relevant part:

- The RSA abandons all estate claims and causes of action before such claims are even investigated or valued, as discussed above.
- The RSA contemplates payments to certain creditors and their professionals that actually deplete value. Even before executing the RSA, the Debtor [redacted] without obtaining requisite Court approval.[11]
- The RSA contemplates postpetition cash payments to the steering committee of the Ad Hoc Group of Green Notes in exchange for support, and the Debtor's independent director appears to acknowledge that such payments would not be permitted in the chapter 11 case.[12]
- The RSA contemplates nearly full payment of certain creditors, including the Preferred Creditors, as discussed above.

17. *Fourth*, AER improperly used property of the estate outside of the ordinary course without this Court's approval. AER holds controlling interests in the stock of its wholly-owned direct and indirect subsidiaries. It used those interests—its property—to compel its U.S. operating subsidiaries to transfer funds to the Preferred Creditors' advisors, thereby diminishing the value of

[11] *See* AMBI-00026096, attached as **Exhibit 9** to the Costello Declaration ([redacted]; *see also* AMBI-00015785, attached as **Exhibit 10** to the Costello Declaration ([redacted]); AMBI-00014335, attached as **Exhibit 11** to the Costello Declaration [redacted] *see also* RSA §§ 4(t), 4(u) ([redacted]; AMBI-00015421, attached as **Exhibit 12** to the Costello Declaration [redacted]; AMBI-00015433, attached as **Exhibit 13** to the Costello Declaration ([redacted]

[12] *See* RSA §§ 4(v), 31. Mr. Mack viewed his choice as either a "Chapter 11 plan that distinguished ownership" or "an RSA that preserved equity interest in the company." D. Mack Dep. Tr. at 136:3-10.

its equity interest. *See In re Consolidated Auto Recyclers, Inc.*, 123 B.R. 130, 135-37 (Bankr. D. Me. 1991) (finding use of the shares of a parent entity to affect the governance of its subsidiary was an exercise outside of the ordinary course and required notice and approval under section 363(b)).

**C. The Court Should Not Exercise its Discretion to Reward These Breaches**

18. The Court has broad discretion in connection with the Suspension Motion. Even if the Debtor is able to demonstrate that the requirements under section 305(a)(2) can be satisfied (as explained below, the Debtor is unable to satisfy its burden under this subsection; the Debtor did not move under section 305(a)(1), but would also be unable to satisfy its burden under that subsection), the decision remains entirely within the Court's discretion. Section 305(a) of the Bankruptcy Code provides, in relevant part, that the Court "may" dismiss or suspend proceedings if the relevant circumstances are present. 11 U.S.C. § 305(a); *see also In re Xacur*, 219 B.R. 956, 961, 968-69 (Bankr. S.D. Tex. 1998) (recognizing the court's discretion to abstain under 11 U.S.C. § 305); *Efron v. Candelario (In re Efron)*, 529 B.R. 396, 405 (B.A.P. 1st Cir. 2015) ("A bankruptcy court's decision to abstain under § 305(a) is discretionary and must be made on a case-by-case basis."). A debtor that has failed to fulfill its duties to stakeholders should not be rewarded by suspending the process that provides for fundamental creditor protections and safeguards. The Supreme Court considered a similar effort to end-run creditor protections in *Czyzewski v. Jevic Holding Corp.*, where it held that a chapter 11 case cannot be dismissed in a manner that "circumvent[s] the Code's procedural safeguards." 580 U.S. 451, 468-69 (2017).[13] The Debtor is

[13] The Supreme Court held in *Jevic* that a bankruptcy court's dismissal power under section 1112(b) cannot be used as a "backdoor" to accomplish nonconsensual, priority-departing distributions that the Bankruptcy Code would not permit through a confirmed plan or chapter 7 liquidation. 580 U.S. at 465. The same logic applies to section 305(a): this Court should not use its discretion to suspend a domestic case as a mechanism to allow the Debtor to effectuate a plan that is inconsistent with the Bankruptcy Code.

attempting to do exactly that.

## II. The Suspension Motion Fails Because it is Predicated Upon an Improper and Void Agreement

19. Under section 363 of the Bankruptcy Code, a debtor is only allowed to "use, sell, or lease, other than in the ordinary course of business, property of the estate," after notice and a hearing. 11 U.S.C. § 363(b)(1). This process benefits both the debtor and its creditors. *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) ("The framework … is designed to allow a … debtor-in-possession … the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary."). Courts evaluate whether an action is taken in the ordinary course from two perspectives: (i) horizontally (*i.e.*, whether the transaction is of the sort commonly undertaken by companies in the industry) and (ii) vertically (*i.e.*, whether creditors would expect the company to undertake a transaction of this magnitude or risk). *Id.* at 953. Compliance with section 363 requires a debtor to "satisfy its fiduciary duty" to the "creditors and equity holders" by supplying "some articulated business justification" for its action outside of ordinary business. *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). If the Debtor fails to satisfy these requirements, courts in the Fifth Circuit have consistently held that such undisclosed and unapproved post-petition agreements are "void and unenforceable as a matter of law." *In re Am. Rice, Inc.*, No. 98-21254-c-11, 2010 WL 8752393, at *11 (Bankr. S.D. Tex. Apr. 27, 2010) (citing cases); *see also In re Electro Sales & Serv., Inc.*, No. 21-50546 (MMP), 2025 WL 1013032, at *4 (Bankr. W.D. Tex. Mar. 28, 2025) (holding that post-petition transactions in violation of section 363 are void); *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) (explaining that transactions outside of the ordinary course of business that lack court

approval are "unenforceable, ineffective, and void.").

20. The RSA is not an ordinary course transaction. The Debtor is the "parent holding company for the Response business . . . [which] specializes in environmental services and operates in six main business units: (i) emergency response, (ii) fire response, (iii) marine response, (iv) medical response, (v) industrial response, and (vi) environmental response." *See Amended Declaration of Thiago Da Costa Silva in Support of Chapter 11 Petition* [Docket No. 15] at ¶ 15. Entry into the RSA—[redacted]—prohibits competing transactions, and obligates the Debtor to pay advisor fees and structuring payments to a particular creditor group—is not an ordinary business transaction that a company in its industry would enter into. Nor is the RSA the type of agreement a hypothetical creditor would expect the company it invested in to enter into, given its all-encompassing scope.

21. The Debtor never filed a motion, gave notice, or requested a hearing for approval of its entry into the RSA. It denied creditors the opportunity to test the transaction under the proper legal standards. *See In re Chrysler LLC*, 576 F.3d 108, 116, 118 (2d Cir. 2009) (explaining that courts have historically been concerned that a § 363(b) sale could allow one class of creditors to "strong-arm the debtor-in-possession, and bypass the requirements of Chapter 11 to cash out quickly at the expense of other stakeholders," and holding that a court must find a good business reason for a sale transaction under section 363). As a result, the Court should find that the RSA is void *ab initio* with respect to AER. *See In re Am. Rice, Inc.*, 2010 WL 8752393, at *11; *In re Electro Sales & Serv., Inc.*, 2025 WL 1013032, at *5 (holding that a Court's retroactive ratification or validation of a post-petition agreement entered into in violation of section 363 "would amount to a fictitious nunc pro tunc order").

22. Even if the Court is willing to forgive the Debtor's failure to seek approval of the

RSA transaction (it should not), the RSA is still an improper *sub rosa* plan that could not have been approved under section 363 of the Bankruptcy Code. *See In re Braniff Airways, Inc*. 700 F.2d 935, 939-40 (5th Cir. 1983). In *Braniff Airways*, the Fifth Circuit dealt with an analogous situation: the bankruptcy court had authorized the debtor to enter into a sale agreement that dictated terms of the restructuring. *Id.* The Fifth Circuit reversed the order stating that the debtor "should not be able to short circuit the requirements of Chapter 11 … by establishing the terms of the sub rosa plan in connection with the sale of assets." *Id.* at 940. The RSA here expressly dictates the terms of a restructuring that could not be implemented through chapter 11.

## III. The Suspension Motion Fails under Section 305(a)

### A. The Debtor Cannot Satisfy Its Burden Under Section 305(a)(2) of the Bankruptcy Code

23. Section 305(a)(2) permits suspension only if (i) "a petition under section 1515 for recognition of a foreign proceeding has been granted" and (ii) "the purposes of chapter 15 would be best served by such dismissal or suspension." 11 U.S.C. § 305(a)(2). Recognition is thus a prerequisite to suspension, and even then, courts must determine whether suspension would best serve the purposes of chapter 15. Those purposes are set forth in section 1501 of the Bankruptcy Code. *See In re Condor Ins. Ltd.*, 601 F.3d 319, 327 (5th Cir. 2010) (looking to "[t]he stated purpose and overall structure of Chapter 15" under section 1501 to construe the scope of relief available under chapter 15, and explaining that "[s]ection 1501 states the purpose of the Chapter is to further cooperation between the U.S. courts, parties in U.S. bankruptcy proceedings and foreign insolvency courts and authorities, as well as promote 'greater legal certainty,' 'fair and efficient administration of cross-border insolvencies that protects the interests of all creditors,' 'protection and maximization of the value of the debtor's assets,' and 'facilitation of the rescue of financially troubled businesses.'") (quoting 11 U.S.C. § 1501).

24. This Court has not yet granted recognition, and it should not for the reasons set forth in the Ad Hoc Group's objection to that motion in the chapter 15 case. But even if it does, the purposes of chapter 15 would not be served by suspension of the chapter 11 case. This is clear from the authority that the Debtor itself cites, declining to suspend or dismiss U.S. processes notwithstanding recognition of the foreign proceedings because creditors were best protected through the U.S. process. *See, e.g.*, *In re Tradex Swiss AG*, 384 B.R. 34 (Bankr. D. Mass. 2008); *In re RHTC Liquidating Co.*, 424 B.R. 714, 717-20 (Bankr. W.D. Pa. 2010).

25. The purposes of chapter 15 would not be best served by suspension of the chapter 11 case. Section 1501(a)(3) states that the purposes of chapter 15 include the "fair and efficient administration of cross-border insolvencies that protects the interests of ***all*** creditors, and other interested entities, including the debtor." 11 U.S.C. § 1501(a)(3) (emphasis added). The Debtor cannot satisfy section 305(a)(2) by demonstrating that suspension would serve the interests of a single, hand-picked creditor group. A motion to suspend premised on the support of the controlling shareholder and a preferred creditor group, without regard for the interests of the estate's other pari passu creditors, cannot be reconciled with the plain text of section 1501(a)(3). The Debtor therefore cannot meet its burden under section 305(a)(2).

### B. The Debtor Cannot Satisfy its Burden Under Section 305(a)(1) of the Bankruptcy Code

26. To the extent that the Debtor has moved under section 305(a)(1) of the Bankruptcy Code,[14] it likewise fails. Section 305(a)(1) requires a finding that "the best interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a)(1).

[14] *See Debtors' Emergency Motion to Compel Opportunity Dinâmico Fundo de Investimento Em Participações Multiestratégia Responsabilidade Limitdada to Produce (I) Documents and (II) Victor Almeida for a Deposition and In-Person Hearing Testimony* [Docket No. 308] ¶ 1 (citing 11 U.S.C. § 305(a)(1) as the grounds for suspension in this case).

Relief under section 305(a)(1) is considered an "extraordinary remedy." *In re Globo Comunicacoes e Participacoes S.A.*, 317 B.R. 235, 255 (S.D.N.Y. 2004). Courts have held that such remedy "should be used sparingly," *In re Pine Lake Vill. Apartment Co.*, 16 B.R. 750, 754 (Bankr. S.D.N.Y. 1982)*; see also*, *Matter of Luftek, Inc.*, 6 B.R. 539, 548 (Bankr. E.D.N.Y. 1980) ("Congress has indicated that it intended section 305(a) dismissals to be the exception rather than the rule.").

27. For this extraordinary remedy, suspension under section 305(a)(1) must serve the interests of both the debtor and its creditors. *See In re Xacur*, 216 B.R. 187, 195 (Bankr. S.D. Tex. 1997) ("Although advantages might accrue to the alleged debtors should this Court abstain, the test under 11 U.S.C. § 305(a)(1) is not a balancing test. This Court must find the interests of the creditors would be better served by abstention. . . ."); *In re Schur Mgmt. Co., Ltd.*, 323 B.R. 123, 129 (Bankr. S.D.N.Y. 2005) ("The test for suspension (as well as dismissal) is whether both the debtor and the creditors would be 'better served' by such action.") (quoting *In re Eastman*, 188 B.R. 621, 625 (B.A.P. 9th Cir. 1995)). Courts have dismissed or suspended cases under section 305(a)(1) in limited scenarios, including where it would be less costly for everyone, such as "an out-of-court restructuring" that "***treats all creditors fairly*** and avoids the time and expense associated with bankruptcy litigation." *Globo Comunicacoes e Participacoes S.A.*, 317 B.R. at 256 (emphasis added); *see also In re 82 Milbar Blvd. Inc.*, 91 B.R. 213, 216 (Bankr. E.D.N.Y. 1988) ("[L]egislative history shows that it was thought that less expensive arrangements may be practicable and best serve the interests involved in certain cases, but that this was viewed as the exception rather than the rule.").

28. Suspension of the chapter 11 case is not in the best interests of creditors writ large. The pursuit of the RSA transaction in the RJ Proceeding favors a small subset of creditors and the

controlling shareholder over all other stakeholders. The simultaneous denial of the protections afforded the disregarded creditors by the chapter 11 process would further prejudice them. The Preferred Creditors apparently agreed with this position at one time, stating that relief under 305(a)(1) would be "wholly unprecedented here as the Debtor would be seeking to suspend a chapter 11 case it voluntarily filed" and that relief under 305(a)(2) "is plainly unavailable. *See Objection of the Ad Hoc Group to Debtor's Motion for Entry of an Order Extending Exclusivity Period Pursuant to Section 1121(d) of the Bankruptcy Code* [Docket No. 153] at n. 9 (citing cases).[15] They have changed their tune since the Debtor agreed to provide them with disparate and favorable treatment.

29. The Debtor, as a fiduciary for its estate, is likewise not best served by suspension. It filed a voluntary chapter 11 petition, benefited from the chapter 11 protections for ten months, stated that "[a]ll stakeholders benefit from continued stability and predictability that a central process provides," and stated that it was not asking "to artificially delay the conclusion of the chapter 11 case, or to hold creditors hostage to an unsatisfactory plan proposal." *Debtor's Motion for Entry of An Order Extending Exclusivity Period Pursuant to Section 1121(d) of the Bankruptcy Code* [Docket No. 141], ¶¶ 23-24. Now that the Debtor has entered into the RSA, it seeks to

[15] *See, e.g., In re Navient Sols., LLC*, 625 B.R. 801, 820 (Bankr. S.D.N.Y. 2021) ("[T]he prototypical fact pattern under section 305(a)(1) as noted by Congress involves out-of-court workouts and efforts by recalcitrant creditors to commence an involuntary case to gain leverage") (internal citations and quotation marks omitted); *In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86 (Bankr. S.D.N.Y. 2012) (stating that, in enacting section 305(a), "Congress had in mind a workout that was supported by the overwhelming majority of creditors and where the bankruptcy petition was filed only by a recalcitrant minority seeking special treatment."); *In re Stillwater Asset Backed Offshore Fund Ltd.*, 485 B.R. 498, 509 (Bankr. S.D.N.Y. 2013) ("There is no question that § 305(a)(1) was designed to be utilized where, for example, a few recalcitrant creditors attempted to interfere with an out-of-court restructuring that had the support of a significant percentage of the debtor's creditors.") (internal quotation marks omitted); *In re RHTC Liquidating Co.*, 424 B.R. 714, 716–17 (Bankr. W.D. Pa. 2010) (discussing procedural history of the case and noting that various creditors had filed an involuntary chapter 7 case against the debtor, and the foreign representative had subsequently filed a chapter 15 petition for recognition); *In re Tradex Swiss AG*, 384 B.R. 34, 38–40, 44 (Bankr. D. Mass. 2008) (discussing a similar fact pattern as *RHTC Liquidating*).

abandon this process. It cannot credibly argue that this is in its own best interest. *See Pine Lake Vill. Apartment Co.*, 16 B.R. at 753 ("It defies credulity to say that the debtor's interest would be better served by a dismissal when the debtor voluntarily sought the mechanics of Chapter 11 for the purpose of rehabilitation and a fresh start."). Relinquishing countless valuable causes of action through the RSA is contrary to the Debtor's interest in maximizing the value of its estate and can only be explained by the controlling shareholder's effort to maintain ownership and control without the type of new value required in a chapter 11 process.

## IV. The Consequences of Suspension are Uncertain, but Should Not Modify the Debtor's Fiduciary Obligations or the Automatic Stay

30. Remarkably, despite the extraordinary nature of the relief, the Debtor declines to state the consequences of suspension. It seems to want the benefit of the chapter 11 process, without the responsibilities that come with it. But suspension does not work like that. But suspension does not work like that. To the extent that the Debtor believes that its fiduciary obligations are excused or the automatic stay will no longer apply, it is incorrect. The Debtor will still need to act a fiduciary for its estate and stakeholders. *See In re Duratech Indus.*, 241 B.R. 291 (Bankr. E.D.N.Y. 1999) (holding that suspension did not relieve the debtor-in-possession of its continued operation and oversight obligations). If the Debtor seeks that relief, it must obtain it through dismissal.[16] Nor will the Debtor have the benefit of the chapter 11 stay. *See In re Cenargo Int'l, PLC*, 294 B.R. 571, 591 (Bankr. S.D.N.Y. 2003) (stating in the suspension order that the stay was without effect during the term of the suspension). Indeed, any order approving a suspension should make clear that the stay no longer applies. Suspension on any other terms cannot be

[16] Chapter 15 is clear on this point. If a case under another chapter of title 11 is pending at the time of recognition, section 1520 does not apply and any relief sought under section 1521 must be consistent with that prior case. 11 U.S.C. § 1529(1).

reconciled with the purposes of chapter 15. The Court should deny the relief for the several reasons provided herein . But to the extent that the Court overrules the Ad Hoc Group's objection to recognition and chooses to exercise its discretion to suspend the chapter 11 case, it should narrowly tailor the suspension order to ensure that creditors of the chapter 11 estate are not prejudiced.

## CONCLUSION

For the foregoing reasons, the Court should deny the Suspension Motion.

Dated: August 14, 2026
Houston, Texas

Respectfully submitted,

*/s/ Charles R. Koster*

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**CERTIFICATE OF SERVICE**

I certify that on August 16, 2026, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Charles R. Koster*
Charles R. Koster