

WILLIAM K. HARRINGTON  
UNITED STATES TRUSTEE, REGION 2  
U.S. Department of Justice  
Office of the United States Trustee  
201 Varick Street, Room 1006  
New York, NY 10014  
Tel. (212) 510-0500  
[andrea.b.schwartz@usdoj.gov](mailto:andrea.b.schwartz@usdoj.gov)  
By: Andrea B. Schwartz, Esq.  
Tara Tiantian, Esq.  
Trial Attorneys

**Hearing Date and Time:**  
July 20, 2022, at 10:00 a.m.  
**Objection Deadline:**  
July 15, 2022, by 5:00 p.m.  
**Related to ECF No.:**  
ECF No. 8

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
MADISON SQUARE BOYS & GIRLS CLUB, INC,	:	Case No. 20-10910 (SHL)
	:	
Debtor.	:	
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**UNITED STATES TRUSTEE'S OBJECTION TO DEBTOR'S MOTION FOR AN ENTRY OF AN ORDER (I) TEMPORARILY SUSPENDING ITS CHAPTER 11 CASE PURSUANT TO 11 U.S.C. §§ 105 AND 305, AND (II) GRANTING RELATED RELIEF**

TO THE HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2 (the "United States Trustee"), by and through his undersigned counsel, hereby submits his objection to Madison Square Boys & Girls Club Inc. (the "Debtor")'s Motion for an Entry of an Order (I) Temporarily Suspending its Chapter 11 Case Pursuant to 11 U.S.C. §§ 105 and 305, and (II) Granting Related Relief (the "Suspension Motion"). ECF No. 8. In support thereof, the United States Trustee respectfully states as follows:

**PRELIMINARY STATEMENT**

The United States Trustee objects to Debtor's requested relief set forth in the Suspension Motion. First, the Debtor failed to meet the statutory requirement of showing that the suspension would benefit both the Debtor and creditors; the entire pleading articulated only how it would better serve the Debtor's interest. Second, section 305 of the Bankruptcy Code provides for the suspension of all proceedings only, whereas the Debtor requests significant matters be carved out from the suspension. Third, the Debtor failed to identify any precedent where the bankruptcy case was suspended for a mediation that is set to occur in the same bankruptcy court. Fourth, the Debtor's own seven-factor analysis readily shows the bankruptcy court is the appropriate forum, while it counterintuitively asks the bankruptcy court to relinquish its jurisdiction. Fourth, suspension of all proceedings is unnecessary as the parties can stipulate which activities go forward and which activities will not. Importantly, suspending the case in its entirety and only allowing certain Debtor-selected matters to go forward may better serve the Debtor's interest but will prejudice creditors' interests as creditors will not be able to timely seek reliefs from the Court. Therefore, the United States Trustee respectfully requests the Court deny the Debtor's motion.

### **FACTS**

1. On June 29, 2022 (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition ("Petition") under chapter 11 of the United States Code (the "Bankruptcy Code"). ECF No. 1.
2. On July 13, 2022, the United States Trustee appointed the Official Committee of Unsecured Creditors under 11 U.S.C. § 1102(a) (the "Official Committee"). ECF No. 53.
3. According to the Local Rule 1007 statement, the Debtor offers educational, recreational, and mentorship services to young people in New York City's underserved and

under-resourced communities. ECF No. 10.

4. According to the Local Rule 1007 statement, the Debtor is facing approximately 140 pending sexual abuse claims by former members against individuals employed by, or volunteering at, the Debtor at various times from the 1940s to the 1980s, and its inability to litigate or otherwise resolve them precipitated the bankruptcy filing. *Id.*

5. On the Petition Date, the Debtor filed *the Motion for an Entry of an Order (I) Temporarily Suspending its Chapter 11 Case Pursuant to 11 U.S.C. §§ 105 and 305, and (II) Granting Related Relief* (the “Suspension Motion”). ECF No. 8.

6. In the Suspension Motion, the Debtor seeks entry of an order “suspending the chapter 11 case in its entirety other than continued compliance with the first day orders and certain specified administrative, reporting, and other matters to the extent necessary.” Suspension Motion ¶ 10.

7. According to the Proposed Order attached to the Suspension Motion (the “Proposed Order”), the matters that the Debtor proposed are not subject to the suspension include,

- (a) making any payments or taking any actions authorized under the First Day Motions (as defined in the First Day Declaration);
- (b) complying with routine reporting and disclosure obligations, including the filing of monthly operating reports and schedules and statements of financial affairs;
- (c) paying chapter 11 quarterly fees to the U.S. Trustee under 28 U.S.C. § 1930(a)(6);
- (d) taking any actions in connection with any proceeding related to the establishment of a bar date and filing proofs of claim in connection therewith;
- (e) taking any actions in connection with any proceeding related to (i) the retention of professionals under sections 327, 328, and 1104 of the Bankruptcy Code; and (ii) authorizing the Debtor to compensate professionals retained by the Debtor or any official committee pursuant to court order consistent with the Bankruptcy Code or any other order of the court authorizing interim compensation;
- (f) taking any actions in connection with any proceeding seeking entry of an order authorizing the Debtor to incur post-petition financing pursuant to section 364 of the Bankruptcy Code; and
- (g) solely to the extent such party is a Mediation Party, seeking conferences with the Court regarding issues that may arise in connection with the Mediation Motion and any

orders entered by the Court in connection therewith.

Proposed Order ¶ 4.

8. The Proposed Order further provides that, nothing in this order shall suspend, toll, or prohibit, as applicable:

- (a) the deadlines or time limitations under the Bankruptcy Code and Bankruptcy Rules, for example, sections 365 and 1121 of the Bankruptcy Code;
- (b) the appointment of an official committee by the Office of the U.S. Trustee;
- (c) the scheduling and occurrence of the meeting of creditors pursuant to section 341 of the Bankruptcy Code;
- (d) an official committee including CVA Claimants<sup>1</sup> from exercising their rights, if any, to propound formal bankruptcy court-ordered discovery in compliance with applicable law; provided that if the discovery is directed to the Debtor, an official committee including CVA Claimants shall first meet and confer with the Debtor before seeking such relief from the Court; provided, further that any party upon who discovery is propounded (or who is the subject of a motion for leave to serve discovery) may oppose or otherwise contest such discovery or motion notwithstanding this Order;
- (e) the Debtor, an official committee including CVA Claimants, the holders of CVA Claims, or any Mediation Party from seeking clarification from the Court whether or not the filing of the Debtor's chapter 11 case can stay or otherwise affect actions against non-debtors; or
- (f) an official committee of creditors from communicating with its constituency pursuant to section 1102(b)(3) of the Bankruptcy Code or seeking the Court's authorization (by way of motion) to limit the disclosure of information to its constituency pursuant to section 1102(b)(3) of the Bankruptcy Code.

*Id.* ¶ 5.

9. The Proposed Order further provides that “[a]ll parties in interest shall be permitted to seek relief from this Court with respect to exigent and unforeseen circumstances and which the Debtor and such parties are unable to resolve consensually.” *Id.* ¶ 7.

10. On July 13, 2022, Rockefeller University filed an objection to the Suspension Motion. ECF No. 54.

### **ARGUMENT**

Section 305 of the Bankruptcy Code provides that,

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<sup>1</sup> The United States Trustee incorporates the abbreviations as used in the Suspension Motion.

(a)The court, after notice and a hearing, may dismiss a case under this title, or may suspend *all* proceedings in a case under this title, at any time if—

(1) the interests of creditors *and* the debtor would be better served by such dismissal or suspension.

11 U.S.C. § 305(a)(1) (emphasis added).

*First*, the Debtor failed to demonstrate that *both* the debtor's and creditors' interests will be better served by the suspension to justify the granting of an extraordinary remedy. Courts that have construed § 305(a)(1) are in general agreement that abstention in a properly filed bankruptcy case is an extraordinary remedy, and that abstention is appropriate under § 305(a)(1) only in the situation where the court finds that *both* creditors and the debtor would be better served. *See, generally, In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462 (Bankr. S.D.N.Y. 2008); *In re Globo Comunicacoes e Participacoes S.A.*, 317 B.R. 235, 255 (S.D.N.Y. 2004); *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Also, section 305(c) significantly limits appellate review, precluding consideration by the courts of appeal and the Supreme Court. *See* 11 U.S.C. § 305(c). Section 305(a) grants the bankruptcy court the power to forgo the exercise of jurisdiction even when jurisdiction is otherwise appropriate, and thus abstention is an extraordinary remedy that should be used sparingly. 2 Collier on Bankruptcy P 305.02 (16th 2022). The moving party bears the burden to demonstrate that the interests of the debtor and its creditors would benefit from dismissal or suspension of proceedings under § 305(a)(1). *In re Monitor Single Lift I, Ltd.*, 381 B.R. at 462-63.

Here, the Debtor's entire pleading articulated only how the suspension would conserve its cash and save its professional fees and did not mention anything about how the suspension would benefit its creditors. The interest of creditors is just as important as the debtor's interest in

a bankruptcy case. Only articulating the benefit to the Debtor does not meet the statutory requirement that *both* creditors and debtor's interests would be better served by the suspension. Creditors are entitled to assert their rights and seek remedies as they see fit in the bankruptcy court.

Debtor's requested relief is extremely one-sided which appears to benefit itself only. For example, it requests full force and effect of the automatic stay for its protection, whereas permits creditors to seek relief only under exigent and unforeseen circumstances and requires creditors to attempt to resolve consensually with the Debtor. *See* Proposed Order ¶¶ 6-7. Another example is that the Debtor requires the Official Committee to meet and confer with Debtor before seeking discovery-related relief from the Court – and this meet and confer requirement only applies when the discovery is directed toward the Debtor. *Id.* ¶ 5(d). The United State Trustee submits that the Debtor failed to meet its burden of proof showing the requested suspension will benefit both itself and the creditors.

*Second*, the Debtor's request to carve out significant matters from the suspension lacks legal support. “By its terms, section 305(a) applies to *entire* cases or *all* proceedings in a case, not particular proceedings in a case.” *In re Newbury Operating LLC*, No. 20-12976-JLG, 2021 WL 1157977, at \*10 (Bankr. S.D.N.Y. Mar. 25, 2021). “Suspension under § 305(a) divests the bankruptcy court of jurisdiction over the *entire* case during the suspension period.” *In re Picacho Hills Util. Co., Inc.*, No. 13-10742 TL7, 2017 WL 1067754, at \*5 (Bankr. D.N.M. Mar. 21, 2017). “The court may either dismiss a case or suspend *all* proceedings within the case; [c]onversely, under 28 U.S.C. § 1334(c)(1), the court may, in the interest of justice, abstain from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” 2 Collier on Bankruptcy P 305.01 (16th 2022); *see* 28 U.S.C. § 1334(c)(1) (“... nothing in

this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.”). If a party wishes the bankruptcy court to abstain from a particular proceeding, section 1334(c) is the proper vehicle; if it seeks suspension of all proceedings within a case, section 305(a) should be invoked. *Id.*

“Abstention by this Court in the meanwhile does not mean that the debtor in possession is relieved of its duty to continue to file monthly operating statements with this Court and the United States trustee, nor of its duty to comply with all of the other applicable provisions of the United States trustee's operating guidelines.” *In re Duratech Indus., Inc.*, 241 B.R. 291, 300 (Bankr. E.D.N.Y.), *aff'd*, 241 B.R. 283 (E.D.N.Y. 1999). Specifically, the court in *Duratech Indus., Inc.* required the debtor to continue to file monthly operating reports, pay post-petition taxes, and maintain liability insurance, and the court held periodic status hearings. *Id.* at 299. Certain contested matters were deemed reserved for later determination upon proper notice when the Court vacates or modifies its order of case abstention. *Id.* at 300. While a suspension motion is considered case by case, it is clear that the activities that are permitted to occur during the suspension period are administrative in nature and do not require the court’s active involvement and adjudication.

According to the Proposed Order, the Debtor requested the Court to permit the occurrence of various matters that could be contested, complicated and require the Court's active involvement, such as debtor-in-possession financing, employment and compensation of professionals and formal discovery. *See* Proposed Order ¶¶ 4-5. Having these activities active during the suspension period contradicts the essence of section 305, the court’s temporary relinquishment of its jurisdiction. *See* 9 Am. Jur. 2d Bankruptcy § 733 (by suspension of all

proceedings in a case, § 305 permits the bankruptcy court to abstain “from jurisdiction over the bankruptcy case itself as opposed to a proceeding arising under the case or arising in or related to the case”).

*Third*, the Debtor failed to cite any precedent where a bankruptcy case was suspended for a mediation in the very bankruptcy court that the Debtor asks to relinquish its jurisdiction. All cases cited by the Debtor concerned the situation where a court suspended a bankruptcy case due to active litigation occurring in a different forum. *See e.g. In re Duratech Indus., Inc.*, 241 B.R. at 296 (suspending the core (and non-core) of this bankruptcy case is now before the Magistrate/District Court.); *In re Gabriel Techs. Corp.*, No. 13-30341, 2013 WL 5550391, at \*1 (Bankr. N.D. Cal. Oct. 7, 2013) (suspending the bankruptcy case pending appeals in the United States Court of Appeals for the Federal Circuit). Whether or not such precedent exists, suspending this bankruptcy case for the purpose of conducting a mediation in the same court is unnecessary. Mediation is routinely employed in bankruptcy cases, and it generally does not require the simultaneous suspension of other proceedings. The Debtor could stipulate with parties to refrain from taking certain actions instead of imposing a blanket suspension on all parties and proceedings (except the ones carved out in the Proposed Order).

*Fourth*, the seven factors under which the Debtor analyzed its request is largely inapplicable here. The seven factors are:

- 1) The economy and efficiency of administration;
- 2) Whether another forum is available to protect the interests of both parties or there is already a pending proceeding in a state court;
- 3) Whether federal proceedings are necessary to reach a just and equitable solution;
- 4) Whether there is an alternative means of achieving an equitable distribution of assets;
- 5) Whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;



- 6) Whether non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- 7) The purpose for which bankruptcy jurisdiction has been sought.

ECF No. 8, Suspension Motion ¶ 19 (citing *In re Newbury Operating LLC*, 2021 WL 1157977, at \*10).

As a general matter, the seven factors are mostly applicable in cases that involve dismissal instead of suspension. Here, there is no another forum that is available to protect the interests of all parties, nor is there a pending proceeding in another court (the second factor); there is also no out-of-court arrangement that would better serve all interests here (the fifth factor); there is no non-federal insolvency proceeding that has proceeded far along (the sixth factor); the federal proceedings, *i.e.*, the bankruptcy case, are necessary to reach a just and equitable solution as the Debtor intends to reorganize and confirm a chapter 11 plan (the third factor). The analysis of the factors clearly does not favor suspension, and in fact, it readily shows it is counterintuitive that the Debtor would want to suspend the case it voluntarily filed, except to the extent that the suspension of the entire case with selected carve-outs would better serve the Debtor's interest only.

The United States Trustee does not take issue with the cost-saving factor but submits that achieving cost-saving does not require an extraordinary remedy of suspending all proceedings whereby creditors lose their right to timely seek remedies.

### **CONCLUSION**

WHEREFORE, the United States Trustee respectfully requests the Court deny the Debtor's Suspension Motion and grant such other and further relief as the Court deems just.

Dated: New York, New York  
July 15, 2022

Respectfully submitted,

WILLIAM K. HARRINGTON  
UNITED STATES TRUSTEE

By: /s/ Tara Tiantian  
Andrea Schwartz  
Tara Tiantian  
Trial Attorneys