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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: MADISON SQUARE BOYS & GIRLS CLUB, INC.,[1] Debtor.	Chapter 11 Case No. 22-10910

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 above-captioned debtor and debtor in possession (the "Debtor") respectfully states as follows in support of this Motion (the "Motion"):

Preliminary Statement

1. The Debtor is a New York not-for-profit institution that has served under-resourced communities in the Bronx, Harlem, and Brooklyn for over 138 years. The filing of this chapter 11 case was necessitated to equitably and efficiently address over one hundred claims that were filed against the Debtor following the passage of New York's Child Victims Act (the "CVA") in 2019, which, among other things, opened a claim revival window for previously time-barred sexual

[1] The last four digits of the Debtor's federal tax identification number are 6792. The Debtor's mailing address is 250 Bradhurst Avenue, New York, New York 10039.

abuse claims (the "CVA Claims"). As described more fully in the First Day Declaration (as defined below), the alleged activities giving rise to the CVA Claims were perpetuated by individuals who volunteered at, or were employed by, the Debtor at various times from the 1940s to the 1980s. At the close of the CVA filing deadline on August 13, 2021, the Debtor was named as a defendant in 86 lawsuits involving 149 plaintiffs (the "CVA Claimants"). It became quickly apparent that the Debtor could not afford to litigate and resolve the CVA Claims on an individual basis and that a comprehensive solution was necessary to fairly and equitably compensate the CVA Claimants, while also enabling the Debtor to continue its mission of serving New York City's youth at its six clubhouses.

2. The Debtor retained restructuring advisors in late 2020 and early 2021 to explore various alternatives to address the CVA Claims. Given the Debtor's extremely limited resources, an open-ended restructuring process was out of the question. The vast majority of the Debtor's assets are subject to donor and state law restrictions that limit the Debtor's ability to monetize them for unprescribed purposes, including payment of creditor claims. Moreover, and in stark contrast to most comparable situations, the Debtor has relatively little-known insurance from the relevant time period. Where coverage has been identified, it remains subject to significant disputes as to both the extent and the scope of coverage. Therefore, the Debtor and its advisors sought to achieve prepetition consensus with the Debtor's key stakeholders regarding a comprehensive solution that could be implemented through a prearranged chapter 11 plan of reorganization. By frontloading negotiations out of court, the Debtor hoped to minimize the extensive administrative expenses seen in other recent chapter 11 cases addressing claims arising under the CVA and similar statutes—the goal being to maximize both the recoveries of the CVA Claimants and the Debtor's ability to exit chapter 11 promptly with its charitable mission intact.

3. Over the past year, the Debtor and its advisors pursued extensive and multi-tracked discussions with key stakeholders, including (a) counsel to over 80% of CVA Claimants (the "Ad Hoc Committee"), (b) the Debtor's insurers, and their respective counsel, with respect to whom the Debtor uncovered evidence of primary or secondary coverage for the relevant time periods, (c) Rockefeller University ("Rockefeller"), which was named as a co-defendant by 88 of the CVA Claimants and against which the Debtor maintains significant causes of action in connection with the majority of the CVA Claims, and (d) the Boys & Girls Clubs of America, the national organization that was named as a defendant by 98 of the CVA Claimants ("BGCA"). This engagement included the sharing of substantial information and diligence materials regarding, among other things, the Debtor's assets and operations. Despite extensive efforts by the Debtor to achieve prepetition consensus on a prearranged chapter 11 plan, the Debtor did not receive the requisite level of engagement with, or actionable responses from, the necessary parties.

4. During this period, the Debtor also engaged with several third-party financing sources to fund a chapter 11 process and contributions to a compensation trust for the benefit of CVA Claimants.[2] The Debtor filed this chapter 11 case when it became clear that the Debtor's liquidity would be depleted before any agreement could be reached, and the Debtor lacked sufficient resources to continue the extensive litigation and discovery efforts required to address the CVA Claims. The reason for, and the focus of, the chapter 11 case is the CVA Claims; the Debtor has no funded debt and few, if any, general unsecured creditors that will be affected by the chapter 11 case.

5. The Debtor has now run out of options. A traditional "free-fall" chapter 11 case without the safeguards requested by this Motion would be unsustainable and would deplete the

[2] The Debtor is in advanced discussions with a financial institution concerning a postpetition loan which, if pursued, will be subject to Court approval.

Debtor's limited, unrestricted assets—likely resulting in nothing more than a circuitous path to a liquidation to the detriment of all parties in interest. The CVA Claimants would be left to contend with an uncertain and value-destructive process where the vast majority of the Debtor's assets are subject to various legal restrictions. Moreover, New York City would lose a bedrock institution that has provided critical services to at-risk children, families in need, and under-resourced communities for well over a century. The Debtor believes that the only way to potentially prevent such a destructive outcome is to institute procedures intended to bring the parties promptly to the mediation table,[3] while materially reducing the expense and distraction that would otherwise burden the process by suspending chapter 11 proceedings as described herein for a limited period to permit the Debtor and its key stakeholders to determine whether a mediated solution is possible.

6. The relief sought herein is narrowly tailored to what is strictly necessary to fit the unique circumstances of this chapter 11 case and is in the best interests of the Debtor, the CVA Claimants, and the Debtor's other stakeholders. The Suspension, coupled with the court-ordered mediation, is designed to create a process that furthers the purposes of the Bankruptcy Code by facilitating the opportunity for a fair and equitable resolution of the CVA Claims and the successful reorganization of the Debtor without exacerbating the Debtor's precarious financial position and thereby further negatively affecting the recoveries available to the CVA Claimants.

7. While there is no certainty that the mediation will be successful, it is significant and notable that substantially all of the chapter 11 cases involving claims brought under the CVA or similar statutes have required mediation to achieve resolution. If the mediation is successful, the Debtor expects to have commitments to finance the remainder of the chapter 11 case, and will

[3] Contemporaneously herewith, the Debtor filed the *Debtor's Motion for Entry of an Order: (I) Appointing the Honorable Shelley C. Chapman as Mediator; (II) Referring Certain Matters To Mandatory Mediation; and (III) Granting Related Relief* (the "Mediation Motion").

seek to lift the Suspension and promptly pursue confirmation of a chapter 11 plan. If the mediation does not result in a confirmable plan of reorganization, the Debtor will have to seriously consider pursuing an orderly liquidation process. As reflected on the cash flow forecast attached to the First Day Declaration as Annex A, the Debtor has only sixty (60) days before its depletes all of its unrestricted liquid assets. Thus, the Debtor seeks to utilize this window to focus all of its resources to mediate with its key stakeholders to determine whether a consensual resolution of the CVA Claims through a plan of reorganization is possible.

8. This is an unusual case that warrants unusual relief. The prospect of closing doors that have been open since 1884 to vulnerable families who rely on the Debtor's services, including thousands of children who have already signed up for this year's summer programs at the Debtor's clubhouses, compels the Debtor to seek this case-specific form of relief. The Suspension provides the Debtor with an opportunity to continue its engagement with the parties that began prior to the Petition Date and pursue a mediated result that fairly and equitably compensates CVA Claimants and allows the Debtor to continue its vital mission in some of the most under-resourced communities in New York City—a result that is in all stakeholders' best interests. The likely alternative would be tragic: liquidation and cessation of the Debtor's services to the communities and families that need them most. Importantly, prior to the Petition Date, the Debtor consulted with the Ad Hoc Committee, the Debtor's insurer, Federal Insurance Company, and BGCA regarding the relief requested herein, and each of these key stakeholders is supportive of the relief requested herein.

9. This Court's authority under sections 105 and 305 of the Bankruptcy Code, as well as its inherent powers to control its docket, give the Court wide discretion to approve the Suspension. For the reasons stated herein, the Debtor respectfully requests that the Court enter the

Proposed Order (as defined below) to maximize the Debtor's chances of a successful reorganization.

Relief Requested

10. By this Motion, the Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"): (a) 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 (hereinafter, the "Suspension"); and (b) granting related relief.

Jurisdiction and Venue

11. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

12. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

13. The bases for the relief requested herein are sections 105(a) and 305(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rule 1017, and the Court's inherent powers to control its docket.

Background

14. On January 28, 2019, the New York State Legislature passed the CVA, which was signed into law on February 14, 2019. The claim-revival window opened on August 14, 2019, allowing previously time-barred claims to be brought, and originally was set to remain open for one year. The window was extended an additional year due to the COVID-19 pandemic, and closed on August 13, 2021. While the CVA window was open, the Debtor was named as a defendant in 86 lawsuits involving 149 plaintiffs. As of the date hereof, there are 140 claims that remain pending against the Debtor. The remaining claims were resolved through prepetition settlements.

15. On June 29, 2022 (the "Petition Date"), the Debtor commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in this chapter 11 case.

16. A description of the Debtor, the reasons for commencing this chapter 11 case, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this Motion are set forth in the *Declaration of Jeffrey Dold (I) in Support of First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2*, filed contemporaneously herewith (the "First Day Declaration").

17. The Debtor also filed contemporaneously herewith the Mediation Motion, seeking entry of an order to establish mediation procedures to address the CVA Claims.

Basis for Relief

I. The Suspension Should Be Approved Under Section 305 of the Bankruptcy Code Because it is in the Best Interests of the Debtor and its Creditors

18. Section 305(a)(1) of the Bankruptcy Code permits the Court, "after notice and a hearing," to "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." Suspension of a chapter 11 case is considered an "extraordinary remedy" and the movant bears the burden of proving that "the interests of the debtor and its creditors would benefit from . . . suspension of proceedings under § 305(a)(1)." *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462–63 (Bankr. S.D.N.Y. 2008) (citations omitted). The decision to suspend a chapter 11 case is made on a case-by-case basis. *Id.* at 464.

19. Courts in the Second Circuit consider the following factors when deciding whether to grant suspension:

(a) The economy and efficiency of administration;

(b) Whether another forum is available to protect the interests of both parties or there is already a pending proceeding in a state court;

(c) Whether federal proceedings are necessary to reach a just and equitable solution;

(d) Whether there is an alternative means of achieving an equitable distribution of assets;

(e) 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;

(f) Whether a non-federal insolvency has proceeded so far in those proceedings that would be costly and time-consuming to start afresh with the federal bankruptcy process; and

(g) The purpose for which bankruptcy jurisdiction has been sought.

See Newbury Operating LLC, No. 20-12976, 2021 WL 1157977, at *10 (Bankr. S.D.N.Y. Mar. 25, 2021).

20. "[W]hile all factors are considered, not all are given equal weight in every case." *In re Monitor Single Lift I, Ltd.*, 381 B.R. at 465; *see also In re Acis Cap. Mgmt., L.P.*, 584 B.R. 115, 146 (Bankr. N.D. Tex. 2018) ("not all [factors] are given equal weight in every case and the court should not conduct a strict balancing") (citing *In re TPG Troy, LLC*, 492 B.R. 150, 160 (Bankr. S.D.N.Y. 2013)). Moreover, "[a]s noted in the statute, the overriding considerations are, of course, the interests of creditors and the debtor[s]." *In re Gabriel Techs. Corp.*, Case No. 13-30341, 2013 WL 5550391, at *4–*5 (Bankr. N.D. Cal. Oct. 7, 2013). Where parties disagree as to whether suspension is in the best interests of all parties, the "court does not count votes to decide the issue but weighs the competing interests of the various creditor constituencies and the Debtor, and then appl[ies] the applicable factors to the peculiar circumstances of an[] individual case, exercis[ing] its sound discretion to make a decision for or against suspension." *Id*. at *5.

21. Courts have wide discretion to fashion relief appropriate to the particular circumstances. *See In re Picacho Hills Util. Co., Inc.*, Case No. 13-10742 TL7, 2017 WL 1067754, *6 (Bankr. D.N.M. Mar. 21, 2017) ("Based on the case law and the purpose of § 305, . . . the contours of suspension may be fashioned by a bankruptcy court to fit the needs of the case."). Moreover, relief under section 305(a) of the Bankruptcy Code is not limited to a particular fact pattern. *See Monitor Single Lift*, 381 B.R. at 463 (noting that while the prototypical situation referenced in the legislative history involves involuntary cases commenced by recalcitrant creditors to gain leverage in out-of-court negotiations, "nowhere in the text of § 305(a)(1) or in its legislative history did Congress specifically limit the basis for a § 305(a)(1) motion" to such cases and that "[t]he legislative history's reference to this fact-pattern only as an 'example' of a basis for abstaining under § 305(a)(1) validates this broader view of § 305(a)(1)'s application.").

22. Indeed, most recently, in the wake of COVID-19, section 305(a)(1) of the Bankruptcy Code was used to justify case-specific forms of relief through temporary suspension of proceedings that relieved the debtor of the expenses of chapter 11 for a limited period. *See, e.g.*, *In re Modell's Sporting Goods Inc.*, Case No. 20-14179 (Bankr. D.N.J. Mar. 11, 2020) [Docket Nos. 166, 294, 371] (granting several requests so debtors could "mothball" the vast majority of the bankruptcy case pursuant to section 305(a)(1) of the Bankruptcy Code to give debtors the opportunity to resurrect their prepetition restructuring plan).

23. Further, courts have authorized suspension under section 305(a)(1) while a key determinative matter is being decided. For example, in *In re Duratech Industries, Inc.*, 241 B.R. 291 (Bankr. E.D.N.Y. 1999) *aff'd*, 241 B.R. 283 (E.D.N.Y. 1999), the bankruptcy court *sua sponte* ordered suspension of bankruptcy proceedings under section 305(a)(1) to conserve modest estate resources pending the outcome of a district court proceeding that would determine the debtor's ability to confirm a plan of reorganization. In so ruling, the bankruptcy court observed that "[t]here is no legitimate point to be gained in having this Court engage in a more active administration of this case pending the outcome of litigation before the District Court. In effect, all the 'action' is going on before the District Court, and until those matters are decided, there can be no meaningfully informed role for this Court to play in moving the chapter 11 case along to confirmation, dismissal, or conversion." *Id*. at 299–300.

24. Similarly, in *In re Gabriel Techs. Corp.*, 2013 WL 5550391, at *6, the bankruptcy court suspended proceedings under section 305(a)(1) pending the outcome of certain appellate proceedings that it deemed critical to the ultimate disposition of the chapter 11 cases. There, the court found that "[t]o deal with confirmation issues would also involve more briefing and arguments, and seems premature and unnecessary at present since the outcome of the Appeals is

so critical to the ultimate disposition of these cases, whether they are prosecuted by Debtors as Chapter 11 debtors in possession, or by a trustee either in Chapter 7 or Chapter 11." *Id*. at *3. The bankruptcy court further reasoned that "[s]tated more simply, if the Appeals are resolved favorably to [the debtors' counterparty] with affirmance of the decisions by the District Court, then Debtors have nothing left but liquidation in Chapter 7 with no expectation of any meaningful recovery for creditor[s]." *Id.*

25. The situation here is similar. Suspension is appropriate during the proposed mediation because the mediation will dictate whether or not the CVA Claims can be consensually resolved through a comprehensive global solution. That in turn is likely to determine whether or not the Debtor will be able to resume administration of the chapter 11 case and successfully confirm a plan of reorganization. Consistent with *Gabriel Technologies* and *Duratech*, the Debtor submits that there is no useful purpose achieved by actively administering the chapter 11 case until it is determined whether the mediation results in a viable path forward for the Debtor to pursue confirmation. Like the debtors in *Gabriel Technologies*, when the mediation concludes, the Debtor will either proceed to confirm a plan of reorganization with the CVA Claimants' support, or if no resolution is reached, the most likely path at this time appears to be liquidation.

26. These circumstances meet the applicable factors listed above. *First* and foremost, the Suspension will significantly aid in the economy and efficiency of administration by minimizing unnecessary judicial involvement, costly briefing, and substantive hearings. As noted by the *Gabriel Technologies* court, "consideration of debtor's [sic] Plan and Disclosure Statement in the context of a costly and uncertain confirmation battle makes no sense at this time. As noted above, if the Appeals are adverse to Debtors, then all of that unexpended and expensive time and effort is avoided and efficiency will prevail." 2013 WL 5550391, at *3.

27. That same logic holds here. To expend extremely limited estate assets while there is uncertainty as to whether the Debtor can reach a resolution with the CVA Claimants that will result in a confirmable plan would be a wasteful exercise in futility for all concerned. The Debtor would in short order run out of any available cash to fund the chapter 11 case, let alone recoveries for the CVA Claimants, and would be facing near-certain liquidation. Conversely, with the Suspension in place, the Debtor would be able to conserve resources during a limited mediation window to give the participating parties the best chance to succeed without the distraction and expense that typically burdens a chapter 11 process.

28. *Second*, there is another forum—the mediation—to protect the interests of the Debtor, the CVA Claimants, and other parties in interest. The purpose of the mediation separately requested by the Debtor is to address threshold matters that will determine whether the Debtor will be able to proceed with its reorganization. Until that process concludes, administration of the chapter 11 case would be an unnecessary and, indeed, a devastating drain on the Debtor's resources.

29. Moreover, the Suspension is in the best interests of the Debtor and the CVA Claimants, by far the Debtor's most significant creditor constituency affected by the chapter 11 case. The Suspension will enable the Debtor to benefit from the automatic stay, as well as reduce distraction and associated professional fees, and allow sufficient time for the Debtor and its stakeholders to work toward a mediated solution that maximizes creditor recoveries and puts the Debtor in a position to continue to honor its charitable mission post-emergence. *See In re Compania de Alimentos Fargo*, 376 B.R. 427, 440 (Bankr. S.D.N.Y. 2007) (implying in dicta that a section 305 suspension may not terminate section 362's automatic stay).

30. The Debtor also seeks authority from the Court to continue certain specified activities, including necessary reporting and disclosure obligations, while the Suspension is pending. Such activities include filing monthly operating reports, making statutory payments to the United States Trustee for the Southern District of New York (the "U.S. Trustee"), honoring obligations authorized under the "first day" orders, and enabling the formation of an official committee of unsecured creditors and the retention of its advisors. In addition, the Debtor seeks authority to appear before the Court regarding matters in connection with the mediation, which will facilitate a more efficient, transparent, and effective process.

31. There is ample precedent for courts to carve out certain proceedings that remain in the bankruptcy court's jurisdiction during the suspension period to fit the needs of the case. For example, in *Gabriel Technologies*, the court held that, notwithstanding the suspension of proceedings, certain activities would continue, including an already-scheduled hearing, any request for employment of professionals under section 327 or 328 of the Bankruptcy Code, and administrative responsibilities of filing monthly operating reports and paying United States Trustee fees. 2013 WL 5550391 at *6; *see also Duratech*, 241 B.R. at 300 (abstention "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" and that if the United State Trustee "becomes reasonably apprehensive that the [debtor] is not fulfilling its duties under the guidelines or is incurring material and persisting operating losses, it may simultaneously move to modify or vacate [the suspension order] and to file for whatever relief it deems appropriate under the Bankruptcy Code . . ."); *In re Modell's Sporting Goods Inc.*, Case No. 20-14179 (Bankr. D.N.J. Mar. 11, 2020) (under the

suspension order, debtors were able to continue paying certain expenses, such as rent and insurance, and work through lease rejection procedures, and the bankruptcy court retained jurisdiction to hear certain matters that arose during the suspension period). Courts have also acknowledged the possibility of "some unforeseen circumstance that might require it to attend to something such as permission to file a late claim, a motion for relief from stay by someone not previously involved in the case, or some similar routine matter" and that "[i]f and when such arise, the court will decide then, on a case by case basis, whether to consider them." *Gabriel Techs.*, 2013 WL 5550391 at *6.

32. For the reasons set forth above, the Debtor submits that Suspension is in the best interests of both the Debtor and its creditors, that any potential harm is "outweighed by the salutary effect" of the Suspension, and that the Suspension should be approved pursuant to section 305(a)(1) of the Bankruptcy Code. *See In re Milestone Educ. Inst.*, 167 B.R. 716, 724 (Bankr. D. Mass. 1994) (suspending bankruptcy proceedings to permit state court appeal for resolution of novel questions of receivership law).

II. The Suspension Should Be Approved Under Section 105 of the Bankruptcy Code and the Court's Inherent Powers Under Rule 1 of the Federal Rules of Civil Procedure

33. The Court should also grant the relief requested pursuant to its inherent powers under section 105 of the Bankruptcy Code and Rule 1 of the Federal Rules of Civil Procedure. Bankruptcy Code section 105(a) provides, in relevant part, that, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). The Second Circuit has "repeatedly emphasized the importance of the bankruptcy court's equitable power" under section 105 of the Bankruptcy Code. *In re Momentum Manuf. Corp.* v. *Employee Creditors Committee*, 25 F.3d 1132, 1136 (2d Cir. 1994) (finding that a bankruptcy court "may sift the circumstances surrounding any claim in order to ascertain that

injustice or unfairness is not accomplished in the administration of the debtor's estate, and in so doing it may adopt that remedy which it deems most appropriate under the circumstances," (quoting *In re Stirling Homex Corp.*, 591 F.2d 148, 155–56 (2d Cir. 1978))).

34. Courts have found that, even if section 305 of the Bankruptcy Code is not applicable, section 105(a) of the Bankruptcy Code provides sufficient standalone authority for abstention of chapter 11 proceedings. *See In re Duratech Indus., Inc.,* 241 B.R. 283, 288 (E.D.N.Y. 1999) ("[E]ven if the bankruptcy court did err by concluding that abstention pursuant to section 305 was the appropriate remedy, this Court finds that the bankruptcy court had the authority to make such a determination pursuant to section 105 of the Code."); *see also In re Schueller*, 126 B.R. 354, 359 (D. Colo. 1991) (finding that section 105 was broad enough to permit the court "to defer consideration of a reorganization plan pending the resolution of a potentially dispositive state court appeal"); *In re CraftWorks Parent, LLC*, Case No. 20-10475 (Bankr. D. Del. Mar. 30, 2020) (applying section 105 of the Bankruptcy Code to authorize temporary suspension for retail debtor affected by COVID-19); *In re Pier 1 Imports, Inc.*, Case No. 20-30805 (Apr. 2, 2020 Bankr. E.D. Va.) (same).

35. Moreover, bankruptcy courts have the inherent authority pursuant to Rule 1 of the Federal Rules of Civil Procedure,[4] to control their dockets through staying proceedings, prevent undue delays in the disposition, and generally "control various aspects of the cases before them so that they can protect their proceedings and judgments in the course of discharging their traditional responsibilities." *In re Racing Servs., Inc.*, 635 B.R. 498, 503, 507 (B.A.P. 8th 2022) (quoting

[4] "[The Federal Rules of Civil Procedure] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

Blue Cross & Blue Shield of N.C. v. *Jemsek Clinic, P.A.* (*In re Jemsek Clinic, P.A.*), 441 B.R. 756, 786 (Bankr. W.D.N.C. 2010); *In re Quigley Co., Inc.*, 361 B.R. 723, 742 (Bankr. S.D.N.Y. 2007) (quoting *Citrus Mktg. Bd. of Israel* v. *J. Lauritzen A/S*, 943 F.2d 220, 225 (2d Cir. 1991)). A federal court's authority to control its own docket reflects the public policy underlying Rule 1 of the Federal Rules of Civil Procedure, which promotes "the just, speedy, and inexpensive determination of every action." *In re Racing Servs., Inc.*, 635 B.R. at 507.

36. Bankruptcy courts have also found that "the power to stay proceedings is incidental to the power inherent in every court to control disposition of cases on its docket with economy of time and effort for itself, for counsel, and for litigants." *In re South Side House, LLC*, 470 B.R. 659, 684 (Bankr. E.D.N.Y. 2012) (citing *Landis* v. *N. Am. Co*., 299 U.S. 248, 254 (1936)). Therefore, a bankruptcy court will often use this power to stay bankruptcy proceedings pending arbitration or stay adversary proceedings when it will dispose of or narrow issues to be resolved in that litigation. *See In re Quigley Co., Inc.*, 361 B.R. at 742 (finding that courts have the inherent power to grant a discretionary stay of a proceeding pending arbitration when there are issues common to the arbitration and the court proceeding and those issues may be determined by the arbitration); *Kittay* v. *Landegger, et al.* (*In re Hagerstown Fiber Ltd. P'ship*), 277 B.R. 181, 199 (Bankr. S.D.N.Y. 2002) (a stay is appropriate when the non-arbitrable and arbitrable claims involve common questions of law and fact or when the arbitration is likely to dispose of issues common to the claims of the arbitrating and non-arbitrating defendants).

37. The Court's inherent powers under section 105(a) of the Bankruptcy Code, as well as Rule 1 of the Federal Rules of Civil Procedure, enable it to grant the relief requested by the Debtor in this Motion. The Debtor believes that the Suspension is necessary to carry out the provisions of the Bankruptcy Code as it will enable the Debtor to pursue a value-maximizing

restructuring for the benefit of the CVA Claimants. In addition, suspending proceedings in the manner described herein falls squarely within the policy underlying this Court's ability to control its docket and will facilitate judicial economy and efficient disposition of this chapter 11 case. Accordingly, the Debtor submits that Suspension should be approved pursuant to section 105(a) of the Bankruptcy Code and Rule 1 of the Federal Rules of Civil Procedure.

Motion Practice

38. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtor submits that this Motion satisfies Local Rule 9013-1(a).

Notice

39. The Debtor will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the twenty (20) largest unsecured claims against the Debtor; (c) counsel to the Ad Hoc Committee; (d) counsel to BGCA; (e) counsel to Rockefeller; (f) the Debtor's insurers that have accepted coverage related to the CVA Claims; (g) the office of the Attorney General for the State of New York; (h) the United States Attorney's Office for the Southern District of New York; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

40. No prior request for the relief sought in this Motion has been made to this Court or any other court.

[*Remainder of page intentionally left blank.*]

WHEREFORE, the Debtor respectfully requests that this Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Suspension; and (b) granting relating relief as the Court deems just and proper.

Dated: June 29, 2022
New York, New York

Respectfully submitted,

/s/ Alan W. Kornberg

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Proposed Counsel to the Debtor and Debtor in Possession

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: MADISON SQUARE BOYS & GIRLS CLUB, INC.,[1] Debtor.	Chapter 11 Case No. 22-10910

ORDER GRANTING DEBTOR'S MOTION TO (I) TEMPORARILY SUSPEND ITS CHAPTER 11 CASE PURSUANT TO 11 U.S.C. §§ 105 AND 305, AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtor and debtor in possession (the "Debtor") for the entry of an order (this "Order") (a) authorizing the Suspension; and (b) granting related relief as the Court deems just and proper; and notice of the Motion being sufficient under the circumstances, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the

[1] The last four digits of the Debtor's federal tax identification number are 6792. The Debtor's mailing address is 250 Bradhurst Avenue, New York, New York 10039.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. The Suspension is hereby authorized and the chapter 11 case is hereby suspended during the Mediation Period (as defined in the order approving the Mediation Motion) (the "Suspension Period"), pursuant to 11 U.S.C. §§ 305 and 105, without prejudice to the Debtor's right to seek, on shortened notice, a further extension by further order of this Court.

3. With the consent of any official committee of creditors including CVA Claims (the "Committee"), the Debtor may submit a stipulation extending the Suspension Period. If the Committee does not consent to a further extension of the Suspension Period, the Debtor may seek a further extension after notice and hearing.

4. Nothing in this Order shall prevent the Debtor, an official committee including holders of CVA Claims, or other parties in interest, as applicable, from:

(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 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 postpetition 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.

5. 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 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.

6. The automatic stay shall remain in full force and effect during the pendency of the Suspension Period, subject to the relief procedures set forth in paragraph 7.

7. All 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. Notice of any such request for relief during the Suspension shall be filed with the Court and served by email on the following parties: (a) the Debtor, Madison Square Boys & Girls Club, Inc., 250 Bradhurst Avenue, New York, New York 10039, Attn.: Tim McChristian; (b) proposed counsel to the Debtor, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn.: Alan W. Kornberg, John T. Weber, and Miriam Levi; (c) the U.S. Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Andrea B. Schwartz and Tara Tiantian; (d) counsel to the Ad Hoc Committee, Pachulski Stang Ziehl & Jones LLP, 780 3rd Ave #34, New York, NY 10017, Attn: James Stang, John Lucas, and Gillian Brown; and (e) any statutory committee appointed in this chapter 11 case.

8. Once the Suspension Period has been terminated or expired, the Debtor shall coordinate with the Court and the U.S. Trustee to set appropriate hearing dates and objection deadlines, if applicable, and shall provide such notice of all deadlines as is practicable under the circumstances.

9. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2022

_____
UNITED STATES BANKRUPTCY JUDGE