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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 ENTRY OF AN ORDER
(I) APPOINTING THE HONORABLE SHELLEY C. CHAPMAN AS MEDIATOR; (II)
REFERRING CERTAIN MATTERS TO MEDIATION;
AND (III) 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 more than one hundred claims that were filed against the Debtor following the passage of New York’s Child Victims Act (the “CVA”) in

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.

2019, which opened a claim revival window for previously time-barred sexual 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”).

2. Prior to commencing this chapter 11 case, the Debtor and its advisors exerted significant efforts to engage with its key stakeholders, including: (a) counsel to over 80% of CVA Claimants (the “Ad Hoc Committee”); (b) Rockefeller University (“Rockefeller”), which was named as a co-defendant by 88 of the CVA Claimants and against which the Debtor has significant causes of action relating to the majority of the CVA Claims; (c) the Debtor’s insurers with respect to whom the Debtor uncovered evidence of primary or secondary coverage for the relevant time periods; and (d) the Boys & Girls Clubs of America (“BGCA”), the national organization that was named as a co-defendant by 98 of the CVA Claimants. The Debtor and its advisors worked extensively over the course of a year to advance discussions with these parties regarding a prearranged restructuring, including conducting numerous diligence sessions, setting up a data room containing more than two thousand documents, and sharing term sheets and economic proposals in connection with a comprehensive restructuring.

3. Despite these efforts, the Debtor was unable to reach any prepetition agreements with these constituencies. *First*, although the Debtor and the Ad Hoc Committee engaged in many productive conversations, the parties were unable to reach agreement on a settlement that could serve as the foundation for a prearranged plan. *Second*, the Debtor tried to engage with Rockefeller but the parties could not make substantial progress, particularly without resolution with the Ad

Hoc Committee. *Third*, the Debtor expended substantial resources, including hiring an insurance archeologist, to uncover available insurance coverage, but its efforts have been met with limited success. As of the Petition Date, only one insurer, Federal Insurance Company (“Federal”), has accepted any coverage obligations with respect to CVA Claims, and has done so subject to a reservation of rights while simultaneously disputing the extent and scope of its coverage obligations. *Fourth*, while Madison and BGCA have held productive discussions regarding a potential global resolution of the CVA Claims, to date BGCA has determined that it is more appropriate for it to pursue its defenses to the CVA Claims against it in the civil litigation system.

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 When it became clear that the Debtor’s liquidity was insufficient to provide the Debtor with enough runway to continue its prepetition efforts to build consensus around a prearranged chapter 11 process, the Debtor sought chapter 11 relief with the objective of building on the momentum of its prepetition efforts through an orderly process that would bring parties to the table, conserve limited estate resources, facilitate a fair, equitable, and efficient resolution of the CVA Claims, and enable the Debtor to continue its charitable mission serving New York City’s youth. 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 very few remaining unrestricted liquid assets and cannot survive a drawn-out restructuring process that is mired in litigation, discovery, and other expensive and inefficient distractions. The Debtor believes that a court-ordered mediation process at the outset

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

of this chapter 11 case, coupled with a suspension of chapter 11 proceedings, is the only viable path to achieve its reorganization objectives. Thus, the Debtor filed contemporaneously herewith the Suspension Motion³ seeking to suspend the chapter 11 case for a limited period, other than certain routine payment, disclosure, and reporting obligations and other discrete activities, to conserve remaining unrestricted resources during the mediation and to give the Debtor and other participating parties the best possible opportunity, for a finite period of time, to reach consensus without the distraction and expense that typically burdens a chapter 11 process. Without this dual form of relief—mediation and suspension—the Debtor would be facing a potential liquidation, which would result in the loss of an institution that has served as a cornerstone for under-resourced New York communities for over 138 years and a safe haven for thousands of at-risk children.

6. Months and months of prepetition discussions have demonstrated the necessity of a compulsory mechanism to compel key parties to substantively engage on the issues at the heart of this chapter 11 case. As reflected on the cash flow forecast attached to the First Day Declaration as Annex A, the Debtor has only sixty (60) days before it depletes its unrestricted liquid assets and, absent additional funding, would likely be forced to liquidate. Further, absent a plan of reorganization that resolves the CVA Claims, fundraising above what is needed to maintain services (*i.e.*, to facilitate payments to CVA Claimants or repayment of debt) would be exceedingly difficult. Thus, the Debtor seeks to utilize this window to focus all of its resources to mediate with certain key stakeholders to determine whether a consensual resolution of the CVA Claims through a plan of reorganization is possible.

³ The “Suspension Motion” means 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*, filed contemporaneously herewith.

7. Mediation is commonly used as a tool for chapter 11 debtors facing claims under the CVA or similar statutes, and is particularly appropriate here where the alternative, an unstructured “free-fall” chapter 11 process, would deplete the Debtor’s available assets and force the Debtor to consider liquidation, to the detriment of all the Debtor’s stakeholders—principally, the CVA Claimants, and the children in the communities the Debtor has served for well over a century. Accordingly, for the reasons stated herein, the Debtor respectfully requests that the Court grant this Motion.

8. The Debtor has previewed the relief requested herein with the Ad Hoc Committee, Federal, and BGCA, and each has acknowledged the substantial benefits of mediation under the circumstances facing the Debtor to provide key stakeholders an opportunity to work towards a comprehensive resolution that will enable the CVA Claimants to obtain equitable compensation and provide the Debtor the means to continue its vital mission for the communities of New York City. These key stakeholders are also supportive of Judge Chapman acting as mediator in the chapter 11 case. Accordingly, as of the filing of this Motion, each of the Ad Hoc Committee, Federal, and BGCA are supportive of the relief requested herein.

Relief Requested

9. By this Motion, the Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”): (a) appointing The Honorable Shelley C. Chapman (the “Mediator”) to mediate any and all issues related to the comprehensive resolution of the CVA Claims through a chapter 11 plan of reorganization (the “Mediation Issues”); (b) referring the Mediation Issues to mediation (the “Mediation”); and (c) granting related relief.

Jurisdiction and Venue

10. 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.

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

12. The bases for the relief requested herein are sections 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rule 9019-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), General Order M-452, and the *Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings in the United States Bankruptcy Court, Southern District of New York* (the “SDNY Mediation Procedures”).

Background

13. 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.

14. On June 29, 2022 (the “Petition Date”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as 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.

15. A description of the Debtor’s business, 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”).

16. Contemporaneously herewith, the Debtor filed the Suspension Motion, pursuant to which the Debtor requested that this Court suspend all chapter 11 proceedings for a limited period, other than those described in the Suspension Motion, pending the outcome of the Mediation.

Proposed Mediation Process

17. The Debtor is seeking to establish a mediation process that will facilitate a fair and efficient resolution of the CVA Claims through consummation of a chapter 11 plan of reorganization by implementation of the following procedures:

- (a) The Mediation Parties (as defined below) shall meet and confer within the later of two (2) business days after the entry of the Proposed Order and the appointment of an official committee of creditors including CVA Claimants, to establish the timing of the Mediation, with the initial session to be held the earlier of fourteen (14) days following the entry of the Proposed Order or the appointment of an official committee of creditors including CVA Claimants. Notwithstanding the foregoing timeline, unless directed by the Mediator, the commencement of a mediation topic/session shall not begin until the respective Mediation Parties have the information they deem reasonably necessary to engage in such mediation topic/session. Subject to the foregoing, if the Mediation Parties are unable to agree on timing after meeting and conferring in good faith, the Mediator shall establish the timing of the Mediation.

- (b) The Mediation shall continue for a period of ninety (90) days (the “Mediation Period”), subject to further extension by the Court upon request of the Debtor or a Mediation Party. If one or more of the Mediation Parties does not consent to such request, the Court will consider the recommendations of the Mediator and the other Mediation Parties to determine whether to extend the Mediation Period.
- (c) Subject to the consent of the Mediation Parties, the Mediator may invite additional parties to participate in the Mediation. Subject to the consent of the Mediator and the other Mediation Parties, nothing herein or in the Proposed Order shall prevent the Debtor from seeking an order from the Court to compel any other party to participate in the Mediation.
- (d) The Mediator shall file a written report (the “Mediation Reports”) on the docket for this chapter 11 case every four (4) weeks regarding the status (although not the content) of the Mediation. The Mediator shall share copies of draft Mediation Reports with the Mediation Parties at least forty-eight (48) hours prior to filing the Mediation Reports and provide the Mediation Parties an opportunity to comment upon them prior to their filing. If a Mediation Party is not satisfied with the Mediator’s Mediation Report, such Mediation Party may file its own Mediation Report subject to the same limitations set forth herein and in the Proposed Order. The Mediation Parties may request periodic conferences with the Court upon the filing of the Mediation Reports, in each case scheduled at the Court’s discretion.
- (e) Promptly upon conclusion of the Mediation, the Mediator shall file a final Mediation Report with the results of the Mediation. At the first scheduled omnibus hearing in the chapter 11 case following the conclusion of the Mediation and the filing of a report by the Mediator regarding the Mediation, the Mediation Parties shall report to the Court regarding the outcome (although not the content) of the Mediation.
- (f) No communication of any type, whether oral or written, related in any way to the Mediation, or the Mediation itself, shall be used by any party for any purpose, including impeachment, in any arbitration, judicial, administrative, or other proceeding. Such communications shall be strictly confidential and may not be disclosed to any non-party to the Mediation.

18. The Debtor is requesting that the following parties be designated initially as parties who have agreed to participate in the mediation (collectively, the “Mediation Parties”): (a) the Debtor; (b) any official committee (including its members and their respective counsel) appointed

by the Office of the United States Trustee that includes the holders of CVA Claims; (c) Federal; and (d) BGCA.

19. The participation of any Mediation Party in the Mediation shall not be deemed to waive any argument that such party is not subject to any case in New York state or federal court and shall not be asserted by any party as a basis for supporting an argument for general or specific jurisdiction over another Mediation Party in any New York state or federal court.

Basis for Relief

20. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). *See, e.g., In re Casse*, 198 F.2d 327, 336 (2d Cir. 1999) (The “basic purpose of section 105 is to assume the Bankruptcy Court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction . . .”) (internal citations omitted). Moreover, it is within the Court’s inherent powers to refer parties to non-binding mediation where appropriate and it reasonably serves the interests of justice. *See In re Atlantic Corp.*, 304 F.3d 135, 144-45 (1st Cir. 2002) (finding it is within the court’s inherent powers to require parties to participate in non-binding mediation, particularly in complex cases with multiple claims and parties where mediation “is likely to conserve judicial resources without significantly burdening the objectors’ rights to a full, fair, and speedy trial.”); *see also In re A.T. Reynolds & Sons, Inc.*, 424 B.R. 76, 85 (Bankr. S.D.N.Y. 2010) (“While it goes without saying that a court may not order a party to settle, this Court has authority to order the parties to participate in the process of mediation, which entails discussion and risk analysis.”), *rev’d on other grounds*, 452 B.R. 374 (S.D.N.Y. 2011).

21. Local Rule 9019-1 authorizes this Court to refer matters to mediation in accordance with the SDNY Mediation Procedures. The Debtor proposes to conduct the Mediation in accordance with the SDNY Mediation Procedures, except as otherwise provided herein and in the Proposed Order.

22. Courts presiding over chapter 11 cases commenced to address claims arising from alleged sexual abuse have routinely utilized mediation, often with the goal of developing support around a confirmable plan structure. *See, e.g., In re the Diocese of Buffalo, N.Y.*, Adv. Pro. No. 20-01009, Case No. 20-10322 (Bankr. W.D.N.Y. Feb. 3, 2022) [Docket No. 1568] (ordering mediation for multiple parties to mediate CVA claims and insurance coverage); *The Diocese of Camden, N.J.*, Case No. 20-21257 (Bankr. D.N.J. May 20, 2021) [Docket No. 640] (ordering mediation to develop plan and disclosure statement to provide distribution to sexual abuse claimants, among other issues); *In re Boy Scouts of America*, Case No. 20-10343 (Bankr. D. Del. June 9, 2020) [Docket No. 812] (same); *In re Roman Catholic Church of The Archdiocese of Santa Fe*, Case No. 18-13027 (Bankr. D.N.M. Sept. 6, 2019) [Docket No. 252] (ordering mediation to negotiate a global resolution to sexual abuse claims, all insurance coverage disputes regarding sexual abuse claims, and related matters); *In re USA Gymnastics*, Case No. 18-09108 (Bankr. D. Del. May 17, 2019) (same) [Docket No. 514]; *In re Roman Catholic Bishop of Great Falls Montana*, Case No. 17-60271 (Bankr. D. Mont. July 26, 2017) [Docket No. 159] (ordering mediation of sexual abuse claims); *In re The Diocese of New Ulm*, Case No. 17-30601, (Bankr. D. Minn. Mar. 23, 2017) [Docket No. 41] (ordering mediation with insurance carriers to develop plan and disclosure statement to provide distribution to sexual abuse claimants); *In re Diocese of Duluth*, Case No. 15-50792 (Bankr. D. Minn. Mar. 10, 2016) [Docket No. 70] (same); *In re The Roman Catholic Bishop of Stockton*, Case No. 14-20371 (Bankr. E.D. Ca. Feb. 3, 2014) [Docket

No. 113] (ordering mediation “in all contested matters” and “in all adversary proceedings”); *In re Society of Jesus, Oregon Province*, Case No. 09-30938, (Bankr. D. Or. Oct. 13, 2009) [Docket No. 494] (ordering mediation for “all pending contested matters” and “all pending adversary proceedings”).

23. Further, courts within this district and others have ordered mediation to address contested matters. *See, e.g., In re the Diocese of Buffalo, N.Y.*, Adv. Pro. No. 20-01009, Case No. 20-10322 (Bankr. W.D.N.Y. Feb. 3, 2022) [Docket No. 1568] (ordering mediation for multiple parties, including debtor and the debtor’s insurance carriers, to mediate CVA claims and insurance coverage); *In re The McClatchy Co.*, Case No. 20-10418 (Bankr. S.D.N.Y. Feb. 25, 2020) [Docket No. 107] (ordering official committee of unsecured creditors to participate in plan mediation); *In re Dean & DeLuca N.Y., Inc.*, Case No. 20-10916 (Bankr. S.D.N.Y. Aug. 25, 2020) [Docket No. 255] (ordering the debtors, creditor’s committee, the debtors’ direct and indirect equity holders, and other parties to plan mediation); *In re Sound Shore Medical Center of Westchester*, Case No. 13-22840 (Bankr. S.D.N.Y. Oct. 25, 2013) [Docket No. 402] (ordering mediation for holders of medical malpractice claims); *In re Cabrini Medical Center*, Case No. 09-14398 (Bankr. S.D.N.Y. Dec. 15, 2010) [Docket No. 497] (ordering mediation for holders of medical malpractice, indemnification, and litigation claims); *In re Motors Liquidation Co.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 4, 2012) [Docket No. 11777] (ordering mediation for holders of unliquidated and/or liquidation claims against the debtors); *In re Teligent Inc.*, Case No. 01-12974 (Bankr. S.D.N.Y. Feb. 4, 2004) [Docket No. 1806] (ordering mediation for proceedings seeking recovery of transfers pursuant to chapter 5 of the Bankruptcy Code).

24. Here, referring the Mediation Issues to Mediation before Judge Chapman is appropriate and in the best interests of the Debtor’s estate, the CVA Claimants, and the Debtor’s

other stakeholders. The Mediation Issues will implicate complex and multi-party matters, including but not limited to: (a) the treatment of abuse claimants under a chapter 11 plan and related trust distribution procedures; (b) the funding of a victims compensation trust; (c) the treatment of abuse claims that are asserted against non-debtor co-defendants; (d) the enforceability of donor and other restrictions on the Debtor's assets; and (e) issues pertaining to insurance, including coverage disputes between the Debtor and its insurers.

25. Litigating these issues would impose extensive discovery costs, professional fees, and case delays that the Debtor simply cannot afford. Resolving these issues expeditiously is necessary to achieve a resolution of the chapter 11 case and avoid a potential liquidation. The Debtor has an extremely limited window—a mere 60 days—before it depletes available liquidity. Even if the Debtor secures financing, the debt burden would only compound the Debtor's financial difficulties absent a swift resolution of the CVA Claims. Thus, the Debtor seeks to utilize this precious time wisely by engaging with its key stakeholders, under the guidance of an experienced mediator, in an orderly process that minimizes unnecessary inefficiencies and expenses, including through the suspension of proceedings described in the Suspension Motion.

26. Moreover, it is beyond question that Judge Chapman has the experience and ability to work with the parties to foster a consensual and equitable resolution of disputed issues, and her appointment is supported by the Ad Hoc Committee, Federal,⁴ and BGCA. Judge Chapman recently presided over the chapter 11 case of the Roman Catholic Diocese of Rockville Centre, New York, which faced CVA-related liabilities, and served as a mediator in the chapter 11 cases of Purdue Pharma L.P. and its affiliated debtors. *See In re Purdue Pharma L.P.*, Case No. 19-23649 (Bankr. S.D.N.Y. May 7, 2021) [Docket No. 2820] (appointing Judge Chapman as

⁴ Federal reserves the right to seek an additional insurance-focused mediator. The Debtor reserves all rights to object to any such request.

mediator). Additionally, Judge Chapman will not seek compensation from the Debtor's estate for her time spent in connection with the Mediation, which will assist the Debtor in preserving liquidity during this critical period.

27. For the reasons described in this Motion, the Mediation will benefit the Debtor's estate and all of its stakeholders by affording the Mediation Parties a valuable opportunity to reach a comprehensive solution that fairly and equitably compensates the CVA Claimants and allows the Debtor to continue to fulfill its charitable mission to New York City's most under-resourced communities. Accordingly, the Debtor respectfully submits that the Court should enter the Proposed Order appointing Judge Chapman as Mediator and referring the Mediation Issues to Mediation.

Motion Practice

28. 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

29. 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

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

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WHEREFORE, the Debtor respectfully requests that this Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (a) appointing the Honorable Shelley C. Chapman as Mediator; (b) referring the Mediation Issues to Mediation; and (c) granting such related 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
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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 (I) APPOINTING THE HONORABLE SHELLEY C. CHAPMAN AS
MEDIATOR; (II) REFERRING CERTAIN MATTERS TO MEDIATION; AND (III)
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) appointing the Honorable Shelley C. Chapman as mediator (the “Mediator”); (b) referring the Mediation Issues to mediation (the “Mediation”); and (c) granting related relief; 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 statements in support

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.

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 Honorable Shelley C. Chapman is appointed as Mediator for the Mediation Issues.
3. The Mediation Issues shall be referred to Mediation and the following parties (collectively, the “Mediation Parties”) have agreed to participate in Mediation and shall be bound by this Order: (a) the Debtor; (b) any official committee (including its members and their respective counsel) appointed by the Office of the United States Trustee that includes the holders of CVA Claims; (c) Federal; and (d) BGCA.
4. The participation of any Mediation Party in the Mediation shall not be deemed to waive any argument that such party is not subject to any case in New York state or federal court and shall not be asserted by any party as a basis for supporting an argument for general or specific jurisdiction over another Mediation Party in any New York state or federal court.
5. Notwithstanding Local Rule 9019-1, General Order M-452, or the *Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings*, the Mediator shall have discretion to direct the manner and establish the rules of the Mediation, and consider and take appropriate action with respect to any matters the Mediator deems appropriate in order to conduct the Mediation, subject to the terms of this Order; provided, however, that concerns arising from COVID-19 shall be taken into account as to the Mediation Parties’ attendance in person in connection with the Mediation.

6. The Mediation Parties shall meet and confer within the later of two (2) business days after the entry of this Order and the appointment of an official committee of creditors including CVA Claimants, to establish the timing of the Mediation, with the initial session to be held the earlier of fourteen (14) days following the entry of this Order or the appointment of an official committee of creditors including CVA Claimants. Notwithstanding the foregoing timeline, unless directed by the Mediator, the commencement of a mediation topic/session shall not begin until the respective Mediation Parties have the information they deem reasonably necessary to engage in such mediation topic/session. Subject to the foregoing, if the Mediation Parties are unable to agree on timing after meeting and conferring in good faith, the Mediator shall establish the timing of the Mediation.

7. The Mediation shall continue for a period of ninety (90) days (the “Mediation Period”), subject to further extension by the Court upon request of the Debtor or a Mediation Party. If one or more of the Mediation Parties does not consent to such request, the Court will consider the recommendations of the Mediator and the other Mediation Parties to determine whether to extend the Mediation Period.

8. Subject to any order approving the Suspension Motion, this Order does not require any Mediation Party to submit a dispute as to any matter or make a mediation proposal to the Mediator before seeking relief from the Court or any other court of competent jurisdiction.

9. Subject to the consent of the Mediation Parties, the Mediator may invite additional parties to participate in the Mediation. Subject to the consent of the Mediator and the other Mediation Parties, nothing herein shall prevent the Debtor from seeking an order from the Court to compel any other party to participate in the Mediation.

10. The Mediator shall file a written report (the “Mediation Reports”) on the docket for this chapter 11 case every four (4) weeks regarding the status (although not the content) of the Mediation. The Mediator shall share copies of draft Mediation Reports with the Mediation Parties at least forty-eight (48) hours prior to filing the Mediation Reports and provide the Mediation Parties an opportunity to comment upon them prior to their filing. If a Mediation Party is not satisfied with the Mediator’s Mediation Report, such Mediation Party may file its own Mediation Report subject to the same limitations set forth herein. The Mediation Parties may request periodic conferences with the Court upon the filing of the Mediation Reports, in each case scheduled at the Court’s discretion.

11. Promptly upon conclusion of the Mediation, the Mediator shall file a final Mediation Report with the results of the Mediation. At the first scheduled omnibus hearing in the chapter 11 case following the conclusion of the Mediation and the filing of a report by the Mediator regarding the Mediation, the Mediation Parties shall report to the Court regarding the outcome (although not the content) of the Mediation.

12. No communication of any type, whether oral or written, related in any way to the Mediation, or the Mediation itself, shall be used by any party for any purpose, including impeachment, in any arbitration, judicial, administrative, or other proceeding. Such communications shall be strictly confidential and may not be disclosed to any non-party to the Mediation.

13. At the end of the Mediation Period, the Mediation Parties shall confer in good faith regarding whether to include additional parties in interest, as applicable, in an additional phase of the Mediation.

14. If parties are added to the Mediation as described in this Order, such additional parties shall become Mediation Parties and shall become subject to all of the provisions of this Order.

15. The Debtor and the other Mediation Parties shall participate in the Mediation in good faith.

16. A representative with settlement authority for each of the Mediation Parties shall be required to attend the Mediation.

17. The Mediation shall be conducted by the Mediator without cost to the Debtor's estate or to any Mediation Party.

18. For the avoidance of doubt, nothing in this Order precludes the Mediator from reporting the status (although not the content) of the Mediation or from reporting failures to attend or to participate in the Mediation in good faith to the Court orally at a publicly noticed hearing or in writing on the docket at any time.

19. The sanctions available under Fed. R. Civ. P. 16(f) shall apply to any violation of this Order and/or the provisions of Local Rule 9019-1.

20. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order.

21. 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