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6 Proposed Attorneys for the Official
7 Committee of Unsecured Creditors

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 In re
11 ARA MACAO HOLDINGS, L.P.,
12 Debtor.

Proceedings Under Chapter 11
Case No. 3:18-bk-03615-PS

13
14 **APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED**
15 **CREDITORS FOR ORDER APPROVING EMPLOYMENT OF**
16 **ENGELMAN BERGER, P.C. AS COUNSEL FOR THE COMMITTEE**
17 **AND RULE 2014 STATEMENT OF COUNSEL**

18 The duly-appointed Official Committee of Unsecured Creditors in the above-captioned
19 bankruptcy case (the “Committee”) brings this Application for authorization to employ
20 Engelman Berger, P.C. (the “EB Firm”) as counsel for the Committee in this bankruptcy case.
21 In support hereof, the Committee respectfully represents as follows:

22 **JURISDICTION AND VENUE**

23 This Court has jurisdiction over the case pursuant to 28 U.S.C. §§ 157 and 1334. This
24 matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this
25 Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested is
26 11 U.S.C. §§ 327 and 329, and Fed.R.Bankr.P. 2014.

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BACKGROUND INFORMATION

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2 1. This court is already very familiar with the parties, background and procedural
3 status of this case. Thus, for purposes of this Application, the EB Firm provides only
4 background information relevant to the relief requested herein.

5 2. By Order entered May 8, 2018 [DE 68], the Court converted the involuntary
6 case of the Putative Debtor to a voluntary case, and further ordered [DE 69] that the Debtor
7 had until May 16, 2018 to file a list of creditors, and until May 23, 2018 to file Statements and
8 Schedules.

9 3. At that time, the motion by certain petitioning creditors to have a Chapter 11
10 Trustee appointed was pending and set for evidentiary hearing to be held June 28, 2018.

11 4. The parties stipulated to appointment of a Chapter 11 Trustee, and by Order
12 entered June 12, 2018 [DE 106], the Court ordered that a disinterested person be appointed as
13 Chapter 11 Trustee, and that the evidentiary hearing set for June 28th was vacated and reset as
14 a status hearing.

15 5. On June 21, 2018, the U.S. Trustee filed a motion to appoint Grant Lyon as
16 Chapter 11 Trustee [DE 110], and by Order entered June 21, 2018 [DE 112], the U.S.
17 Trustee's motion was granted by the Court.

18 6. On June 21, 2018, the U.S. Trustee's office appointed the Committee in this
19 matter [DE 113].

20 7. The Committee has requested that the EB Firm seek appointment as its counsel
21 to protect the interests of all unsecured creditors. As more fully described in the Verified
22 Statement of Patrick A. Clisham ("Verified Statement") filed contemporaneously herewith,
23 the EB Firm previously represented the petitioning creditors in filing the prior involuntary
24 bankruptcy case of the Debtor, and is very familiar with the case and all pending issues.

25 8. The Committee wishes to employ the EB Firm without payment of any security
26 retainer. The Committee understands that the EB Firm will seek Bankruptcy Court approval
27 and allowance of its fees and reimbursement of its out-of-pocket expenses to be paid by the

1 Debtor's estate.

2 **SERVICES TO BE PERFORMED BY THE EB FIRM**

3 9. The services that the EB Firm will be required to render to the Committee are:

4 a. To advise the Committee with respect to its rights, powers and
5 obligations on behalf of all unsecured creditors of the estate.

6 b. To investigate and analyze any assets of the Debtor which may be
7 available for benefit of unsecured creditors.

8 c. To advise the Committee regarding matters of bankruptcy law, including
9 the rights and remedies of the Debtor with respect to its assets.

10 d. To represent the Committee in any proceedings or hearings in the
11 Bankruptcy Court related to issues involving unsecured creditors.

12 e. To assist the Committee in the negotiation and analysis of any plan of
13 reorganization proposed or filed by the Committee, the Debtor, or the Trustee.

14 f. To perform any and all other legal services incident and necessary as the
15 Committee may require in connection with the Debtor's case.

16 10. The EB Firm appreciates that a trustee has been appointed and will avoid
17 duplicating efforts with the Trustee.

18 **QUALIFICATIONS OF THE EB FIRM AND RULE 2014 DISCLOSURES**

19 11. The Committee believes that the EB Firm is well-qualified to render the
20 foregoing services. The EB Firm is comprised of attorneys who are experienced in, among
21 other areas of law, insolvency, bankruptcy and corporate reorganization, and is well-qualified
22 to represent the Committee in proceedings of this nature. The EB Firm has represented
23 several official committees of unsecured creditors over the last ten (10) years.

24 12. For this representation only, EB has agreed to the following discounted hourly
25 rate structure:

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Scott B. Cohen	\$400
Patrick A. Clisham	\$400
Other Firm Partners	\$360-\$600
Firm Associates	\$225-\$350
Firm Paralegals	\$195

13. The EB Firm has conducted a conflicts check with respect to all of the Debtor's disclosed creditors. The EB Firm discloses in the Verified Statement the details surrounding its representation of the petitioning creditors, which the EB Firm believes does not preclude it from representation of the Committee herein.

14. Other than the EB Firm's representation of the petitioning creditors, neither the EB Firm, nor any of the attorneys employed by it, have any connection with the Debtor or any of the Debtor's attorneys or accountants, nor do they have, in this case, any connection with the Debtor's creditors, any other outside party-in-interest, or their respective attorneys or accountants, or anyone employed by the United States Trustee for the District of Arizona, which the EB Firm believes would affect or bar any representation of the Committee herein.

15. Furthermore, the EB Firm does not have an interest adverse to the Debtor or the bankruptcy estate. The EB Firm is not a creditor of the estate and is not owed any funds by the Debtor.

16. Based upon the above disclosures, the Committee believes, and the EB Firm believes that the EB Firm is a "disinterested person" within the meaning of Bankruptcy Code § 101(14).

COMPENSATION PROCEDURE

17. In accordance with the Guidelines promulgated by the United States Trustee in the District of Arizona regarding payment of professionals, the EB Firm will render services to the Committee at the EB Firm's agreed hourly rates, which may be subject to adjustment from time to time, plus costs. The EB Firm understands that its compensation in this case is subject to Court approval. In conformity with Sections 330 and 331 of the Bankruptcy Code, the EB Firm intends to file interim applications for allowance of fees and reimbursement of costs advanced as and when appropriate.

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18. At the end of the EB Firm's representation of the Committee, the EB Firm will file an application seeking final allowance of all fees and costs, regardless of whether interim compensation has been paid to the EB Firm. Upon allowance of such fees and costs, the Committee will seek payment from the Debtor's estate of the difference between the amounts allowed and any interim compensation paid to the EB Firm throughout the case.

WHEREFORE, the Committee respectfully requests that the Court enter an Order as follows:

A. Based upon the foregoing and pursuant to Bankruptcy Code § 327 and Federal Rule of Bankruptcy Procedure 2014(a), the Committee be authorized to employ the EB Firm with compensation in such amount as the Court may hereafter allow in accordance with law, on the terms set forth herein;

B. The Committee's employment of the EB Firm is authorized effective as of the date of this Application; and

C. Granting to the Committee any such other and further relief as may be just and proper under the circumstances of this case.

DATED this 28th day of June, 2018.

**OFFICIAL COMMITTEE OF
 UNSECURED CREDITORS**

By /s/ Geoffrey de Sibert (w/permission)
 Geoffrey de Sibert
 Chairman of the Committee

Prepared by:
ENGELMAN BERGER, P.C.

By /s/ PAC, SBA # 023154
 Scott B. Cohen
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COPY of the foregoing e-mailed this
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/s Marie K. Kelly

File a Motion:

[3:18-bk-03615-PS Ara Macao Holdings, L.P.](#)

Type: bk

Chapter: 11 i

Office: 3 (Prescott)

Judge: PS

U.S. Bankruptcy Court

District of Arizona

Notice of Electronic Filing

The following transaction was received from PATRICK A CLISHAM entered on 6/28/2018 at 3:05 PM AZ and filed on 6/28/2018

Case Name: Ara Macao Holdings, L.P.

Case Number: [3:18-bk-03615-PS](#)

Document Number: [117](#)

Docket Text:

Application to Employ *Application Of The Official Committee Of Unsecured Creditors For Order Approving Employment Of Engelman Berger, P.C. As Counsel For The Committee And Rule 2014 Statement Of Counsel* filed by PATRICK A CLISHAM of ENGELMAN BERGER PC on behalf of OFFICIAL COMMITTEE OF UNSECURED CREDITORS. (CLISHAM, PATRICK)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:00874694.PDF

Electronic document Stamp:

[STAMP bkecfStamp_ID=875559564 [Date=6/28/2018] [FileNumber=41970515-0]
][77cf975423ef4dc623836a5a99fb6e14674b20de1e383c5c1ea48c6bd3c8388db96
afc9f97992d76f8bd1272140082a5a82f6df7982cedc0928796554c886543]]

3:18-bk-03615-PS Notice will be electronically mailed to:

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3:18-bk-03615-PS Notice will not be electronically mailed to:

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