

1 ILENE J. LASHINSKY (#003073)
2 United States Trustee
3 District of Arizona

4 CHRISTOPHER J. PATTOCK (#009797)
5 Trial Attorney
6 230 N. 1st Ave., #204
7 Phoenix, Arizona 85003-1706
8 Telephone: (602) 682-2614
9 Facsimile: (602) 514-7270
10 E-Mail: Christopher.J.Pattock@usdoj.gov

11 IN THE UNITED STATES BANKRUPTCY COURT

12 FOR THE DISTRICT OF ARIZONA

13 In re:) Chapter 11
14 Ara Macao Holdings, L.P.,)
15) No. 3:18-bk-03615-PS
16)
17) REPORT AND CERTIFICATION
18 Debtor.) OF ELECTION OF TRUSTEE

19 The United States Trustee for the District of Arizona, Region
20 14 ("UST"), by and through her attorney undersigned, and pursuant to
21 28 U.S.C. § 586(a)(3) and Fed. R. Bankr. P. 2003(d), hereby reports
22 the following:

23 1. The above-captioned case was commenced by the filing of
24 an involuntary chapter 11 petition on April 6, 2018. See docket number
25 1. An Order for Relief was entered on May 8, 2018. See docket number
26 68. An Order directing the UST to appoint a trustee was entered on
27 June 12, 2018. See docket number 106. The UST selected G. Grant Lyon
28 to serve as the chapter 11 trustee, and sought court approval of same
by motion filed on June 21, 2018. See docket number 110. The Court
approved the appointment of Mr. Lyon as trustee on June 21, 2018. See
docket number 112.

2. The UST appointed an unsecured creditors committee on
June 21, 2018. See docket number 113. On July 2, 2018 the creditors'
committee filed a motion requesting an election of a chapter 11 trustee.

1 See docket number 126. Pursuant to that motion, on July 5, 2018 the
2 UST filed a Notice of Meeting of Creditors for the Purpose of Convening
3 an Election, to be held on August 2, 2018. See docket number 132.
4 Accordingly, an election was convened on August 2, 2018 at 1:30 p.m.,
5 and conducted by the undersigned.¹

6 3. The first order of business was to determine the total
7 amount of general unsecured claims eligible to request an election for
8 purposes of determining whether at least 20 percent in amount of the
9 claims eligible to vote had requested an election, as required by 11
10 U.S.C. § 702(b). Such is defined in 11 U.S.C. § 702(a), as incorporated
11 by 11 U.S.C. § 1104(b)(1). An analysis is set forth in the chart
12 attached hereto and incorporated herein by this reference as **Exhibit**
13 **A**. It lists all creditors on Schedule F and the amounts claimed by
14 the debtor to be owed, in addition to all creditors who have filed
15 proofs of claims and the amount they claimed. In a separate column,
16 entitled "Voting Amount," it excludes claims arguably not eligible to
17 vote, including secured, disputed, and/or unliquidated claims, and
18 claims held by insiders.² The UST's computation of the total amount
19 eligible to vote is set forth at the bottom of the last column, in the
20 amount of **\$9,600,654**. Thus, the dollar amount of claims necessary to
21 request an election was 20% of that amount, or **\$1,920,130.80**.

22
23 ¹ An objection to the request for an election and the setting of same was
24 filed by the trustee, Mr. Lyon, on July 26, 2018. See docket number 174.
25 However, said objection was withdrawn by Mr. Lyon, through counsel, on
26 August 6, 2008. See docket number 192.

27 ² Such is indicated by a notation indicating whether the particular claim
28 was secured, unliquidated, disputed, or who objected to the claim (i.e.,
the creditors' committee, or the current trustee, Mr. Lyon, via one of his
three objections: "Lyon 1," "Lyon" or "Lyon 3.").

1 4. A member of the Creditors' Committee, Mr. Daniel Dorgan,
2 requested, pursuant to his "Notice of Filing Declarations as to
3 Solicitation of Proxies by Dan Dorgan," which he had filed the previous
4 day, August 1, 2018, at docket number 186, that an election be held.
5 Attached to the Dorgan Declaration are proxies of fifty-eight
6 creditors, holding claims - per Mr. Dorgan - of \$10,872,275, all of
7 which/whom requested an election. Not all of these creditors, however,
8 were eligible to request an election or to vote, because some are
9 secured, and/or disputed and/or unliquidated claims, and/or claims held
10 by insiders. Mr. Dorgan alleged that claims totaling \$6,288,772 were
11 eligible to request an election, although the UST's computation is
12 **\$6,873,868**. This amount, \$6,873,868, exceeds \$1,920,130.80, so it
13 was appropriate for an election for a trustee to be held.

14 5. Nominations for trustee were requested, and only one
15 candidate was nominated (by Mr. Dorgan), Mr. S. Cary Forrester.

16 6. Ballots were distributed, and only one was filled out,
17 by Mr. Dorgan; it was returned to the undersigned representative of
18 the United States Trustee. A copy of the ballot is attached hereto as
19 **Exhibit B**. The ballot purported to cast \$10,872,275 in favor of Mr.
20 Forrester. However, not all \$10,872,275 were eligible to vote. As
21 discussed above, some were secured, and/or disputed and/or unliquidated
22 claims, and/or claims held by insiders. Additionally, some of those
23 cast had not filed a proof of claim. Only those who have filed proofs
24 of claim are eligible to vote in an election.³ *Fed. R. Bankr. P.*

25 _____
26 ³ Five creditors for whom Mr. Dorgan held proxies and attempted to vote
27 were listed on Schedule F, but did not filed proofs of claim.
28

1 2003(b)(3).⁴ The results are as follows:

2 S. Cary Forrester: \$6,118,181

3 7. Mr. Forrester, having received all the votes having
4 been voted in the election, thereby received the votes of creditors
5 holding a majority in amount of claims specified in 11 U.S.C. §702(a)(1)
6 that are held by creditors that voted for a trustee, as required by 11
7 U.S.C. § 702(c)(2).

8 8. A copy of Mr. Forrester's "Verified Statement,
9 Acceptance of Election as Trustee, and Declaration," is attached hereto
10 as **Exhibit C**.

11 WHEREFORE, the United States Trustee, having filed this
12 Report as required by 11 U.S.C. § 1104(b)(2)(A), and Mr. S. Cary
13 Forrester having filed a Verified Statement indicating that he is
14 disinterested, the United States Trustee hereby certifies the election
15 of S. Cary Forrester as trustee of the above captioned chapter 11
16 estate. Mr. S. Cary Forrester shall be considered to have been
17 selected and appointed, pursuant to 11 U.S.C. § 1104(b)(2)(B)(i), and
18 Mr. G. Grant Lyon's service as trustee shall terminate immediately,
19 pursuant to 11 U.S.C. § 1104(b)(2)(B)(ii).

20 RESPECTFULLY SUBMITTED this 6th day of August, 2018.

21 ILENE J. LASHINSKY
22 United States Trustee
23 District of Arizona

24 CHRISTOPHER J. PATTOCK
25 Trial Attorney

26 ⁴ A creditor may be eligible to request an election if it has not filed a
27 proof of claim. See *In re Petters Co.*, 425 B.R. 534 (D. Minn. 2010); and
28 *7 Collier on Bankruptcy*, at 1104.02[8][b][iv].

1 Copies of the foregoing e-mailed on
2 the 6th day of August, 2018, and mailed
3 on the 7th day of August, 2018, to:

3 ALAN A. MEDA, Esq.
4 Burch & Cracchiolo PA
5 702 E Osborn Rd Suite 200
6 PHOENIX, AZ 85014
7 ameda@bcattorneys.com
8 Attorney for Debtor

7 PATRICK A CLISHAM, Esq.
8 SCOTT B. COHEN, Esq.
9 ENGELMAN BERGER PC
10 3636 N CENTRAL AVE #700
11 PHOENIX, AZ 85012
12 pac@eblawyers.com
13 SBC@ENGELMANBERGER.COM
14 Attorneys for Creditors' Committee

11 Michael W. Carmel, Esq.
12 80 East Columbus Avenue
13 Phoenix, AZ 85012-2378
14 Michael@mcarmellaw.com
15 Attorney for Dr. Eugene Ingles_

14 S. Cary Forrester, Esq.
15 Forrester & Worth, PLLC
16 3636 N. Central Avenue, #700
17 Phoenix, Arizona 85012-1927_
18 SCF@forresterandworth.com
19 Trustee Elect

18 Adam B. Nach, Esq.
19 LANE & NACH, P.C.
20 2001 E. Campbell Avenue, #103
21 Phoenix, Arizona 85016
22 adam.nach@lane-nach.com
23 Attorney for G. Grant Lyon

21 G. Grant Lyon
22 943 Terrace Drive
23 Provo Utah 84604
24 glyon@ateracap.com
25 Trustee

EXHIBIT A

ARA Macao Holdings, L.P.

3:18-bk-03615-PS

Sch F Claim #	POC #	Name of Creditor	Sch F Amount	POC Amount	Voting Amount
3.1		Adele & David Monroe	\$222,063.00		\$222,063.00
3.2		Alan Leff	\$80,773.00		\$80,773.00
3.3	31-1	Brad Ebel	\$237,604.00	\$269,378.00	\$269,378.00
3.4		Camaioni/Hartrick/Minniti	\$164,125.00		\$164,125.00
3.5		Candis Mixon	\$5,000.00		\$5,000.00
3.6		Carlton Harms	\$64,771.00		Lyon 2
3.7		Clayton Hamilton	\$84,494.00		\$84,494.00
3.8	2-1	Daniel Dorgan	\$234,956.00	\$238,264.00	\$238,264.00
3.9	29-1	Donald Duncan	\$246,229.00	\$246,229.00	Lyon 2
3.10		Douglas Hanson	\$18,117.00		\$18,117.00
3.11	16-1	Edward Pike	\$235,604.00	\$235,604.00	Lyon 2
3.12		Eugene Ingles, MD	\$262,875.00		Lyon 2
3.13		Eugene Ingles, MD	\$12,819.00		\$12,819.00
3.14		Eugene Ingles, MD	\$11,550.00		\$11,550.00
3.15		Eugene Ingles, MD	\$3,000.00		\$3,000.00
3.16	33-1	Father Michael Zielk	\$235,333.00	\$234,956.00	\$234,956.00
3.17		Garec Toule	\$181,156.00		\$181,156.00
3.18	25-1	Gary & Meredith Savadove	\$225,229.00	\$225,229.00	\$225,229.00
3.19	7-1	Gary Nitche	\$704,385.00		\$704,385.00
3.20	17-1	Gerald Blumberg	\$221,688.00	\$221,688.00	\$221,688.00
3.21	40-1	Gloria Innis & Earl McAloney	\$80,590.00	\$80,590.00	\$80,590.00
3.22	36-1	Hamza Sundos	\$221,500.00	\$221,500.00	Lyon 2
3.23		ioVest Development, LLC	\$4,200,000.00		Disp
3.24	6-1	IRS	\$28,952.00		Unliq/Dis
3.25		Jeff & Donna Wallace	\$225,875.00		\$225,875.00
3.26	28-1	Jeffrey Cerny	\$246,792.00	\$275,138.00	Secured
3.27	12-1	Jerome M. Adler	\$236,042.00	\$236,042.00	Lyon 2
3.28	35-1	Jessica & Gary Fraiser	\$114,313.00	\$114,313.00	\$114,313.00
3.29	34-1	John & Mary Steiger	\$235,792.00	\$235,792.00	Lyon 2
3.30	1-1	John & Shiela Christensen	\$80,429.00	\$121,738.00	\$121,738.00
3.31	47-1	John Mills	\$235,271.00	\$235,271.00	Lyon 2
3.32		John Shabica	\$46,907.00		\$46,907.00
3.33		Joseph Camaioni	\$218,219.00		Lyon 2
3.34		Joseph Camaioni	\$10,000.00		\$10,000.00
3.35	41-1	Joshua Kirley	\$228,271.00	\$228,271.00	Lyon 2
3.36	22-1	Juan & Rosa Rodriguez	\$56,979.00	\$56,979.00	\$56,979.00
3.37	39-1	Judith & Lewis Hodgins	\$114,313.00	\$114,313.00	\$114,313.00
3.38	21-1	Juliann Canoura	\$342,981.00	\$342,981.00	\$342,981.00
3.39	21-1	Juliann Canoura	\$283,191.00	\$283,191.00	\$283,191.00
3.40	11-1	KB Partners 1, LP	\$118,571.00	\$118,571.00	Lyon 2
	52-1	KB Partners 1, LP		\$181,156.00	\$181,156.00
3.41	46-1	Keith Wexler	\$123,542.00	\$112,118.00	Lyon 2

ARA Macao Holdings, LP

ARA Macao Holdings, L.P.
3:18-bk-03615-PS

Sch F Claim #	POC #	Name of Creditor	Sch F Amount	POC Amount	Voting Amount
	49-1	Keith Wexler		\$105,486.00	\$105,486.00
3.42		Kenneth Rumph	\$249,875.00		Lyon 2
3.43		Kenneth Rumph	\$5,000.00		\$5,000.00
3.44		Kevin & Jennifer Pintar	\$109,042.00		\$109,042.00
3.45		Kris & Marzena Nowak	\$83,444.00		\$83,444.00
3.46	19-1	Lisa & Matt Bond	\$174,422.00	\$174,422.00	\$174,422.00
3.47		Marc Hoang	\$114,313.00		\$114,313.00
3.48		Mark Rabiej	\$1,000.00		\$1,000.00
3.49	18-1	Marsha Pruitt	\$432,840.00	\$236,095.00	Lyon 2
3.49	20-1	Marsha Pruitt		\$196,745.00	Lyon 2
3.50	13-1	Mary & Larry Aiardo	\$197,196.00	\$197,196.00	\$197,196.00
3.51	23-1	Michael Dalek	\$333,625.00	\$215,750.00	\$215,750.00
3.52		Michael Goldstein	\$5,000.00		\$5,000.00
3.53	24-1	Michael Romito	\$236,042.00	\$236,042.00	Lyon 2
3.54	37-1	Mike Hayek	\$235,500.00	\$235,500.00	Lyon 2
3.55	43-1	Paul Landauer	\$197,841.00	\$197,841.00	Lyon 2
3.56	44-1	Paul Landesman	\$193,795.00	\$193,795.00	Lyon 2
3.57	14-1	Peter Becker	\$250,000.00	\$250,000.00	\$250,000.00
3.58	38-1	Peter Townsley	\$250,000.00	\$50,000.00	\$50,000.00
	54-1	Peter Townsley		\$250,000.00	\$250,000.00
3.59	45-1	Richard & Soo-jin Lee	\$236,417.00	\$236,417.00	\$236,417.00
3.60	15-1	Richard Beckman	\$237,167.00	\$237,167.00	\$237,167.00
3.61	10-1	Richard Brown	\$285,072.00	\$120,784.42	\$180,438.00
	50-1	Richard Brown		\$251,321.92	Lyon 2
	51-1	Richard Brown		\$5,000.00	Lyon 2
3.62		Richard Desalvo	\$60,139.00		Lyon 2
3.63		Richard Desalvo	\$5,772.00		\$5,772.00
3.64		Richard Desalvo	\$1,000.00		\$1,000.00
3.65		Richard Mason	\$2,500.00		\$2,500.00
3.66		Richard Muehifelt	\$2,500.00		\$2,500.00
3.67	3-2 Amended	Kristin Umbach	\$331,444.00	\$331,444.00	\$331,444.00
	4-2 Amended	Richard Umbach		\$124,130.00	\$124,130.00
3.68	55-1	Robert & Debra Tronrud	\$213,597.00	\$213,597.00	Lyon 2
3.69	48-1	Robert Mitchell	\$450,876.00	\$450,876.00	\$450,876.00
3.70		Ronald Deaton	\$275,000.00		Unliq/Dis
3.71		Ronald Melmon	\$5,000.00		\$5,000.00
3.72		Scott Frost	\$101,385.00		\$101,385.00
3.73	42-1	Scott Lamers	\$131,025.00	\$131,025.00	Lyon 2
3.74	27-1	Scott, Todd & Eric Shamion	\$230,292.00	\$230,292.00	Lyon 2
3.75		Steven Thayer	\$214,415.00		\$214,415.00
3.76		Thomas Kirkland	\$227,813.00		\$227,813.00
3.77		Thomas Knorr	\$221,063.00		\$221,063.00

ARA Macao Holdings, L.P.
3:18-bk-03615-PS

Sch F Claim #	POC #	Name of Creditor	Sch F Amount	POC Amount	Voting Amount
3.78	30-1	Tim & Alicia Song	\$56,979.00	\$56,979.00	\$56,979.00
3.79	32-1	Tony & Susan Sorrisso	\$247,271.00	\$247,500.00	\$247,500.00
3.80		Tropic Ventures, LLC	\$142,754.00		Cred Comm
3.81	53-1	Wojciech & Violetta Niziolek	\$245,625.00	\$245,625.00	\$245,625.00
	5-1	Edgewater Resources, LLC		\$321,605.49	Lyon 3
	8-1	Gary S. Nitsche		\$531,000.00	\$531,000.00
	9-1	Gary S. Nitsche		\$172,000.00	\$172,000.00
	26-1	Karl Malerich		\$107,875.00	\$107,875.00
	56-1	Elizabeth & William Hartrick		\$82,062.00	\$82,062.00
				TOTAL----->	\$9,600,654.00

EXHIBIT B

BALLOT FOR ELECTION OF CHAPTER 11 TRUSTEE

CREDITOR INFORMATION:

NAME Daniel Dorgan Phone Number: 269-365-8170

Address: 839 Thomas St
Plainwell, MI 49080

1. Your connection to the creditor (your own claim as an individual/company officer/by way of formal proxy/etc.): I am a creditor

2. Amount of Claim:
multiple claims by proxy \$10,872,275 and claim # 2

3. Is the claim a priority claim? NO

4. Is claim secured by collateral? NO

a. If yes, briefly describe the nature of the collateral _____

b. If yes, how much of your claim, in dollars, is secured? _____

5. Is your claim scheduled on the debtor's schedules? YES

a. If so, is it accurate? Yes

6. Have you filed a proof of claim with the Bankruptcy Court? YES

a. If so, when? Amended filed 8/1/2018

CALL FOR ELECTION:

Do you call for the election of a chapter 11 trustee?
(yes/no) YES

NOMINATION:

Do you nominate a chapter ~~11~~ trustee candidate? (yes/no) YES

If yes, who do you nominate? CARY FORRESTER

What is the Dollar Amount of Your Claim that you are voting (in favor of your nominee) \$ 10,872,275

8/2/18 Daniel Dorgan

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11
Ara Macao Holdings, L.P.,) No. 3:18-bk-03615-PS
) VERIFIED STATEMENT, ACCEPTANCE
) OF ELECTION AS TRUSTEE,
Debtor(s)) AND DECLARATION

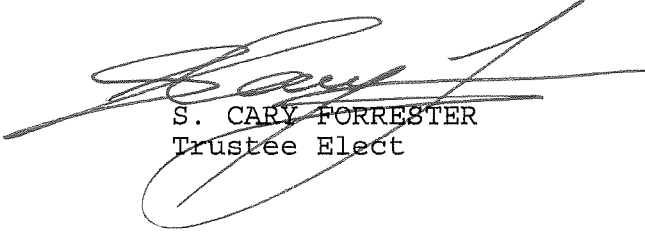
I, the Undersigned, S. Cary Forrester, do hereby accept my election as trustee in the above-captioned case and declare as follows:

- 1. That I am a person eligible and competent to perform the duties of trustee herein.
- 2. That I have not served as examiner in this case.
- 3. That I do not hold, nor do I represent an interest adverse to the estate, except as follows: NONE.
- 4. That I have no connection with the debtor, creditors, other parties in interest, their respective attorneys and accountants, the United States Trustee, and any person employed in the Office of the United States Trustee, except as follows: I sublease office space from the attorneys for the Unsecured Creditors Committee.
- 5. That I have not received any compensation from any party with respect to my employment by the estate in this case, nor have I made any agreements or arrangements with the debtor or any

1 other party for compensation, except that I will seek compensation
2 from the Bankruptcy Court based on fee applications to be filed with
3 and approved by the Court under Sections 326 and 330 of the Bankruptcy
4 Code.

5 I declare under penalty of perjury that the foregoing is
6 true and correct.

7 Dated: August 6, 2018


8 S. CARY FORRESTER
9 Trustee Elect

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28