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6 Committee of Unsecured Creditors

7 **THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**

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

Case No. 3:18-bk-03615-PS

Chapter 11

12 Hearing Date: October 11, 2018
12 Hearing Time: 11:00 a.m.
13 Hearing Room: 601

14 **COMMITTEE'S JOINDER TO TRUSTEE'S OBJECTION**
15 **TO FIRST AND FINAL FEE APPLICATION OF COUNSEL FOR DEBTOR**

16 The duly-appointed Official Committee of Unsecured Creditors in the above-captioned
17 reorganization case (the "Committee") hereby joins the objection filed by Cary Forrester,
18 chapter 11 trustee (the "Trustee") filed at Dkt. 247 (the "Trustee Objection") to the *First and*
19 *Final Application for Allowance of Compensation and for Payment of Expenses to Counsel*
20 *for Debtor* filed by Debtor's counsel Burch & Cracchiolo, P.A. ("B&C") at Dkt. 220 (the
21 "Application") and objects to the allowance or payment of B&C fees in the amounts
22 requested.

23 As more fully developed in the Trustee Objection, none of the approximately
24 \$21,873.48 in fees and costs allegedly incurred by B&C after the appointment of the Trustee
25 are compensable under applicable Supreme Court precedent. *See Lamie v. U.S. Trustee*, 540
26 U.S. 526 (2004). Moreover, to the extent that the Court finds that any post-trustee
27 appointment fees and costs are compensable notwithstanding the *Lamie* decision, a substantial

1 portion of such post-trustee services should not be allowed because they were neither
2 “reasonable” nor “actual and necessary” as is otherwise required under 11 U.S.C. §§
3 330(a)(1) and 503(b)(2).

4 Specifically, at least \$13,500 of the B&C fees requested relate solely to its efforts on
5 behalf of the Debtor to seek the appointment of a committee of equity holders in this case. As
6 described in the Trustee Objection, Debtor’s request to seek the appointment of a committee
7 was neither reasonable nor necessary. Indeed, Debtor’s unilateral attempt to seek the
8 appointment of an equity committee was contradictory to its duties as a chapter 11 debtor-in-
9 possession, who at the time the motion was filed owed its own fiduciary duty to protect the
10 interests of equity holders and subsequently ceded that duty to the chapter 11 trustee Debtor
11 itself stipulated to appoint the very same day its request for a committee was filed. Debtor’s
12 request to appoint a committee benefitted no one and merely resulted in significant fees and
13 costs that must now be borne by the estate to oppose the request. The Committee respectfully
14 requests that the Court decline to add to that burden by denying allowance of any fees any
15 costs incurred by B&C in connection with the equity committee dispute.

16 WHEREFORE, for the foregoing reasons, the Committee joins in the Trustee
17 Objection and objects to the allowance and payment of B&C’s fees to the extent they are not
18 permitted under *Lamie* or should otherwise be disallowed under the application of 11 U.S.C.
19 §§ 330(a)(1) and 503(b)(2).

20 **DATED** this 5th day of October, 2018.

21 **ENGELMAN BERGER, P.C.**

22
23 By /s/ PAC, SBA # 023154
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