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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	)	
Serviços de Petróleo Constellation S.A., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-13952 (MG)
	)	(Jointly Administered)
Debtors in a Foreign Proceeding.	)	Chapter 15
_____	)	

**OMNIBUS MOTION OF THE FOREIGN REPRESENTATIVE FOR ENTRY OF AN ORDER (I) APPROVING THE WITHDRAWAL BY THE FOREIGN REPRESENTATIVE OF THE VERIFIED PETITION FOR RECOGNITION OF THE BRAZILIAN RJ PROCEEDING AS TO OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION) [ECF NO. 7] AND DISMISSAL OF ITS CHAPTER 15 CASE, AND (II) GRANTING THE FOREIGN REPRESENTATIVE’S RENEWED REQUEST FOR RECOGNITION OF THE BRAZILIAN RJ PROCEEDING AS TO ARAZI S.À.R.L. PURSUANT TO 11 U.S.C. §§ 1515, 1517 AND 1520 AND GIVING FULL FORCE AND EFFECT TO THE BRAZILIAN REORGANIZATION PLAN AS TO ARAZI S.À.R.L. PURSUANT TO 11 U.S.C. §§ 105(A), 1145, 1507(A), 1521(A) AND 1525(A)**

<sup>1</sup> The debtors (the “Chapter 15 Debtors”) in these chapter 15 cases are as follows: Serviços de Petróleo Constellation S.A.; Lone Star Offshore Ltd.; Gold Star Equities Ltd.; Olinda Star Ltd. (in Provisional Liquidation) (“Olinda”); Star International Drilling Limited; Alpha Star Equities Ltd.; Snover International Inc.; Arazi S.à.r.l. (“Arazi”); Constellation Oil Services Holding S.A.; and Constellation Overseas Ltd.

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Andrew Childe, the duly-authorized foreign representative (the “**Foreign Representative**”) of the jointly-administered judicial reorganization proceeding (the “**Brazilian RJ Proceeding**”) of Serviços de Petróleo Constellation S.A. and certain of its affiliated debtors (together with its debtor and non-debtor affiliates, the “**Constellation Group**”) pending in the 1st Business Court of Rio de Janeiro (the “**Brazilian RJ Court**”) pursuant to Federal Law No. 11.101 of February 9, 2005 of the laws of the Federative Republic of Brazil, submits this motion (the “**Motion**”) seeking: (I) the withdrawal of the *Verified Petition for Recognition of the Brazilian RJ Proceeding and Motion for Order Granting Related Relief Pursuant to 11 U.S.C. §§ 1515, 1517, and 1520* [ECF No. 7] (the “**Verified Petition**” or “**VP**”)<sup>1</sup> with respect to Chapter 15 Debtor Olinda; (II) the dismissal of Olinda’s chapter 15 case, being case number 18-13959 (MG) in this jointly administered proceeding (the “**Existing Olinda Chapter 15 Case**”) in accordance with Rule 9006-1(b) of the Local Bankruptcy Rules, (III) as previously requested in the Verified Petition, (A) recognition of the Brazilian RJ Proceeding of Chapter 15 Debtor Arazi as either a “foreign main proceeding” or “foreign nonmain proceeding” pursuant to section 1517 of title 11 of the United States Code (the “**Bankruptcy Code**”); and (B) recognition of the Petitioner as the “foreign representative” (as defined in section 101(24) of the Bankruptcy Code) of Arazi’s Brazilian RJ Proceeding; and (IV) as previously requested in the *Motion for Order Pursuant to 11 U.S.C. §§ 105(a), 1145, 1507(a), 1521(a), and 1525(a)(i) Enforcing the Brazilian Reorganization Plan and (ii) Granting Related Relief* [EC No. 100] (the “**Enforcement Motion**”) entry of an order granting full force and effect and comity in the United States to the Brazilian reorganization plan (the “**RJ Plan**”) and the order of the Brazilian RJ Court confirming the RJ Plan (the “**Brazilian Confirmation Order**”) with respect to Arazi. In support of this Motion, the

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<sup>1</sup> For the avoidance of doubt, the Petitioner also requests the withdrawal and dismissal of the superseded Verified Petition [ECF No. 3].

Petitioner relies on and incorporates by reference the Verified Petition, the *Third Declaration of Samuel P. Hershey* [ECF No. 42] (the “**Third Hershey Declaration**”), the *Fourth Declaration of Samuel P. Hershey* [ECF No. 43] (the “**Fourth Hershey Declaration**”), the *Corrected Proposed Findings of Fact and Conclusions of Law of the Foreign Representative* [ECF No. 57-1] (the “**FOF**”), the *Second Declaration of Isabel Picot França Pursuant to 28 U.S.C. § 1746* [ECF No. 135] (the “**Second Picot Declaration**”), and the *Seventh Declaration of Samuel P. Hershey* [ECF No. 198] (filed concurrently herewith) (the “**Seventh Hershey Declaration**”).<sup>2</sup>

### **PRELIMINARY STATEMENT**<sup>3</sup>

The Petitioner submits this Motion seeking relief with respect to two Chapter 15 Debtors, Arazi and Olinda, for which the Brazilian RJ Proceeding has not been recognized as either a foreign main or non-main proceeding in these Chapter 15 Cases. This Court refrained from granting recognition of the Brazilian RJ Proceeding as to Arazi and Olinda because the Brazilian Court of Appeals had entered an order removing these two Chapter 15 Debtors from the Brazilian RJ Proceeding prior to this court’s Recognition Decision (as defined below) concerning the other Chapter 15 Debtors. Since then, the Brazilian Court of Appeals amended its order to re-include Arazi as a Debtor in the Brazilian RJ Proceeding, but declined to re-include Olinda in the Brazilian RJ Proceeding.

As a result, the approved RJ Plan is fully effective as to Arazi, including the restructuring of its limited guarantee obligations with respect to the 2024 Notes. Olinda’s restructuring, however, has changed course as a result of its exclusion from the RJ Proceeding. As the Court is aware, Olinda is also a debtor in a joint provisional liquidation proceeding in the BVI

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<sup>2</sup> Unless otherwise stated herein, exhibits to the Seventh Hershey Declaration shall be referred to as “Ex.”

<sup>3</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Verified Petition, the FOF, and the Enforcement Motion, as applicable.

(the “**Olinda BVI Proceeding**”),<sup>4</sup> and now seeks to restructure its guarantee obligations under a BVI law scheme of arrangement. Accordingly, the Petitioner seeks: (i) the dismissal of the Existing Olinda Chapter 15 Case and the termination of the associated provisional relief granted in connection therewith (in light of Olinda’s BVI foreign representative concurrently herewith seeking recognition from this Court of the Olinda BVI Proceeding), and (ii) recognition of the Brazilian RJ Proceeding and the enforcement of the RJ Plan in the United States with respect to Arazi.

### **BACKGROUND**

1. On May 9, 2019, this Court granted recognition to all of the Chapter 15 Debtors (the “**Recognized Debtors**”) except for Olinda and Arazi. *See* Recognition Decision at 294. In the Recognition Decision, the Court did not grant recognition of the Brazilian RJ Proceeding as to Olinda or Arazi because, at that time, Olinda and Arazi had been removed from the RJ Proceeding by the Brazilian Court of Appeals in a decision issued March 26, 2019. Recognition Decision at 253; *see also Ex. A (Brazilian Court of Appeals Majority Opinion dated March 26, 2019 and English Translation* [ECF No. 79-1]). On June 4, 2019, the Brazilian Court of Appeals issued an amended decision determining that Arazi should remain an RJ Debtor in the Brazilian RJ Proceeding, and only Olinda Star should be excluded (the “**Clarification Decision**”). *See Notice Regarding the Status of the Brazilian RJ Proceedings* [ECF No. 99]; *Ex. B Clarification Decision and Certified English Translation* [ECF No. 99-1]. While Olinda has appealed its removal from the RJ Proceeding to the Brazilian Superior Court of Justice, such an appeal could take years to be decided. Second Picot Declaration ¶ 69.

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<sup>4</sup> *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. 237, 243-245 (Bankr. S.D.N.Y. 2019) (the “**Recognition Decision**”).

2. As a result of the Clarification Decision and delay in the pending appeal in Brazil, Olinda's reorganization had to change course. The parallel restructuring pursued by Olinda and its joint provisional liquidators is set forth in more detail below and in the *Verified Petition for Recognition of BVI Proceeding and Request for Relief Pursuant to 11 U.S.C. §§ 105(a), 1507(a), 1521(a), and 1525(a)* filed contemporaneously herewith in Case No. 20-10712 (the "**Olinda BVI Verified Petition**"). In short, the Petitioner is seeking the dismissal of the Existing Olinda Chapter 15 Case in favor of recognition of the Olinda BVI Proceeding and enforcement of the BVI-law scheme of arrangement governing its restructuring (the "**Olinda BVI Scheme**") that has already been unanimously approved by scheme creditors present and voting, as required by BVI law, and sanctioned by the Eastern Caribbean Supreme Court in the High Court of Justice of the Virgin Islands, Commercial Division (the "**BVI Court**").

3. As for Arazi, on December 5, 2019, this Court granted full force and effect to the RJ Plan only with respect to the Recognized Debtors, and ordered that the Petitioner may subsequently request the same relief for Arazi by filing a motion seeking recognition of Arazi's Brazilian RJ Proceeding. *Order (I) Granting Full Force and Effect in the United States to the Brazilian Reorganization Plan and (II) Granting Related Relief* [ECF No. 192] (the "**FFE Order**") at ¶ F. The Court provided that such a motion could be brought on seven days' notice in consideration of the urgent need of the Constellation Group to close the transactions contemplated by the RJ Plan (the "**Restructuring Transactions**"). *Id.* On December 18, 2019, the Recognized Debtors consummated the Restructuring Transactions. *Update Regarding Closing of Brazilian Restructuring Transactions and Status of Certain Chapter 15 Debtors* [ECF No. 194].<sup>5</sup>

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<sup>5</sup> The Restructuring Transactions included entry into amended and restated credit agreements in respect of the Constellation Group's project financing and working capital facilities, as well as issuance of new secured and unsecured notes pursuant to new indentures. All that remains for the Constellation Group's year-long reorganization process is to restructure certain guarantees issued by Arazi and Olinda in respect of the existing notes.



Accordingly, the Petitioner respectfully requests that this Motion be considered on regular notice, concurrently with the Olinda BVI Verified Petition.

### **ARGUMENT**

#### **I. The Existing Olinda Chapter 15 Case Should Be Dismissed**

4. Good cause exists to grant the withdrawal of the Existing Olinda Chapter 15. Verified Petition, order the dismissal of the Existing Olinda Chapter 15 Case, and terminate provisional relief granted to Olinda pursuant to the Provisional Relief Order. As set forth above, Olinda was removed from the Brazilian RJ Proceeding, for which recognition was originally sought. Accordingly, Olinda has proceeded to restructure its guarantee obligations through the Olinda BVI Proceeding and Olinda BVI Scheme. The BVI-Court appointed foreign representative for the Olinda BVI Proceeding seeks recognition of that proceeding and enforcement of that scheme, and therefore the foreign representative for the Brazilian RJ Proceeding wishes to dismiss this case and terminate the associated provisional relief that was granted in favor of a new case seeking such relief concurrently herewith in connection with the Olinda BVI Proceeding.

5. On August 5, 2019 Olinda, its joint provisional liquidators, certain consenting 2024 Noteholders and certain creditor parties to the Constellation Group's Plan Support Agreement entered into a term sheet (the "**Olinda Term Sheet**") governing the parallel restructuring of Olinda's guarantee obligations in the BVI through the Olinda BVI Proceeding before the BVI Court. Ex. C. In this regard, on December 13, 2019, Olinda, pursuant to the authority of its joint provisional liquidators, resolved to propose the Olinda BVI Scheme to scheme creditors. Ex. D. On February 6, 2020, a meeting of Olinda's scheme creditors was held and the BVI Scheme was approved by 100% of creditors present and voting. Ex. E. Accordingly, for the reasons set forth in more detail below and in the Olinda BVI Verified Petition, the Petitioner seeks to withdraw Olinda's petition in the Existing Olinda Chapter 15 Case and requests the dismissal

of the Existing Olinda Chapter 15 Case concurrently with this Court's consideration of the Olinda BVI Verified Petition.

6. In a similar case, this Court permitted withdrawal of a verified petition where a U.K. scheme of arrangement had not proceeded and the debtors instead pursued alternative restructuring proceedings. *In re Thomas Cook Grp. plc*, No. 19-12984 (Bankr. S.D.N.Y. Oct. 23, 2019) [ECF No. 18] (Glenn, J.). In other cases, chapter 15 debtors have withdrawn their chapter 15 petitions where, for example, the underlying foreign proceedings had been withdrawn. (*In re China Fishery Grp. Ltd. (Cayman)*, No. 16-11895, 2017 Bankr. LEXIS 2017, at \*8 n.7 (Bankr. S.D.N.Y. July 19, 2017)), the court presiding over the underlying foreign proceeding had denied the debtors' commencement of that foreign proceeding (*Ad Hoc Grp. of Vitro Noteholders v. Vitro SAB de CV (In re Vitro SAB de CV)*, 701 F.3d 1031, 1041 (5th Cir. 2013)), or the underlying foreign proceeding had been adjourned following a settlement and no activity had taken place thereafter (*In re SPhinX, LTD.*, 351 B.R. 103, 110 (Bankr. S.D.N.Y. 2006)).

7. The Petitioner also requests that should the Court recognize Olinda's BVI Proceeding as a foreign main or nonmain proceeding, the Court terminate the existing provisional relief that was granted to Olinda at the outset of the Existing Olinda Chapter 15 Proceeding. *See Order Granting Provisional Relief* [ECF No. 29] (the "**Provisional Relief Order**"); § 1522(c). The continued operation of the stay granted pursuant to the Provisional Relief Order will no longer be necessary to protect Olinda from adverse creditor action within the territorial United States if the Court grants the Olinda BVI Verified Petition.

## **II. Arazi's Chapter 15 Petition for Recognition Should Be Granted and the Brazilian RJ Plan Should Be Enforced with Respect to Arazi**

8. Under section 1517(a) of the Bankruptcy Code, subject to the public policy exception contained in section 1506, a foreign proceeding must be granted chapter 15 recognition

if each of the following three requirements is met: (1) such foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515. 11 U.S.C. § 1517(a); Recognition Decision at 269; *see also In re Ocean Rig UDW Inc.*, 570 B.R. 687, 698-99 (Bankr. S.D.N.Y. 2017). This Court has already found that the Petitioner, Andrew Childe, meets the requirements of section 1517(a)(2), and that the Verified Petition meets the additional requirements of section 1515 with respect to the Recognized Debtors under section 1517(a)(3). Recognition Decision at 269-70. The same facts are true with respect to Arazi, so the Petitioner submits that prongs (2) and (3) of section 1517(a) are satisfied. For the reasons set forth below, Arazi’s Brazilian RJ Proceeding also constitutes a “foreign main proceeding” as required under section 1517(a)(1).

9. Section 1502 defines a “foreign main proceeding” as a “foreign proceeding pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). While the Bankruptcy Code does not define “center of main interests,” section 1516(c) provides that, in the absence of evidence to the contrary, a debtor’s registered office or habitual residence “is presumed to be the center of the debtor’s main interests.” 11 U.S.C. § 1516(c). Arazi is incorporated in Luxembourg. Verified Petition ¶ 72. However, COMI analysis does not end with the situs of the debtor’s registered office. As this Court stated in the Recognition Decision, “the COMI presumption is rebuttable where other factors suggest that the true COMI of a debtor lies elsewhere.” Recognition Decision at 272. A debtor’s COMI is assessed as at the time of its chapter 15 filing. *Id.* at 279 (citing *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013)). As set forth below, application of the COMI factors considered in

the Recognition Decision reveals that Arazi's COMI was in Brazil as of December 6, 2018 when the Verified Petition was filed (the "**Petition Date**").

10. In the Recognition Decision, the Court first applied the SPhinX Factors (as defined below) to the Recognized Debtors, noting that these factors are nonexclusive and ought not to be analyzed mechanically. Recognition Decision at 272. As the *SPhinX* court explained:

Various factors, singly or combined, could be relevant to such a [COMI] determination: [1] the location of the debtor's headquarters; [2] the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); [3] the location of the debtor's primary assets; [4] the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; [5] and/or the jurisdiction whose law would apply to most disputes (the "**SPhinX Factors**").

*In re SPhinX*, 351 B.R. at 117. This Court further noted that in determining the "location of those who actually manage the debtor," courts consider more than the location of the board of directors of the debtor. Recognition Decision at 273 (finding that the analysis of the location of management should be "flexible" and reflect the realities of a particular business).

11. Indeed, having regard to the international origins of the Model Law, this Court was guided by an English judgment, finding that evidence showing that the majority of the Constellation Group's employees and day-to-day management are located in Brazil "weigh[ed] more heavily on the Court's COMI analysis" for drillship-owning debtors than evidence regarding the situs of the board meetings of the Group's Luxembourg-incorporated ultimate parent. Recognition Decision at 287-88 (citing *In the Matter of Videology Limited*, [2018] EWHC (Ch) 2186 (Snowden, J.) ("[A] parent company's management and the fact that a parent's board of directors operate the high-level management of a group of companies does not dictate the COMI of all subsidiaries where other evidence suggests that the subsidiaries' real operations take place elsewhere.")).

12. Additionally, this Court recognized the utility of performing the “nerve center” analysis to ensure that courts do not “perfunctorily rely upon the place of incorporation or location of board meetings to establish the corporation’s ultimate COMI.” Recognition Decision at 276-86, 288. This Court noted that, given Congress’s choice to use “COMI” instead of “principal place of business” in chapter 15, the “nerve center” concept does not control but given the similarity of the concepts, courts may consider a debtor’s “nerve center,” including from “where the debtor’s activities are directed and controlled.” *Id.* at 276 (citing *In re Fairfield Sentry Ltd.*, 714 F.3d at 138). This Court noted that central coordination is particularly important for the nerve-center analysis of a business, such as Constellation’s, where asset ownership and operation is separated, and that day-to-day management, as well as the location of most executives, was important to such analysis. *Id.* at 285-86.

13. The Court also examined the expectations of creditors as an additional relevant factor. Recognition Decision at 274 (citing *In re Fairfield Sentry*, 714 F.3d at 130 (“The relevant principle . . . is that the COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties.”)). Specifically, the Court considered the Offering Memoranda to determine whether these contained “any objective evidence that could provide interested parties with notice that a debtor’s COMI was in a particular jurisdiction other than the place of its registered office.” Recognition Decision at 274, 284-88 (citing *In re Oi Brasil Holdings Cooperatief U.A.*, 578 B.R. 169, 228-32 (Bankr. S.D.N.Y. 2017) (reviewing offering memorandum to establish noteholder expectations as part of a COMI analysis); *In re OAS S.A.*, 533 B.R. 83, 101-03 (Bankr. S.D.N.Y. 2015) (same); *In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 474 B.R. 88, 93-94 (S.D.N.Y. 2012) (same); *In re Suntech Power Holdings Co.*,

*Ltd.*, 520 B.R. 399, 418 (Bankr. S.D.N.Y. 2014) (considering terms of indenture to establish creditor expectations regarding likely location of a restructuring as part of a COMI analysis)).

14. Further, this Court took into consideration creditor support in its COMI analysis. Recognition Decision at 284 (“If anything weighs heavily for . . . COMI to be located in Brazil, it is the factor of creditor support.”) (citing *SPhinX*, 351 B.R. at 117 (“[b]ecause their money is ultimately at stake, one generally should defer . . . to the creditors’ acquiescence in or support of a proposed COMI . . . [they] can . . . best determine how to maximize the efficiency . . . of a reorganization and ultimately, the value of the debtor.”)). Accordingly, this Court found that the support of creditors (including, as applicable, Bradseco, the A/L/B Lenders, the Consenting 2024 Noteholders, and the joint provisional liquidators who represented the collective interests of creditors), for a COMI in Brazil weighed in favor of a finding of COMI for each of the debtors incorporated outside of Brazil, with the exception of Parent/Constellation. Recognition Decision at 284-85, 287, 289, 291-93.

**A. Arazi’s COMI as of the Petition Date Was Brazil**

15. Here, each of the factors outlined by the Court in the COMI analysis set forth in the Recognition Decision applies to Arazi as well. FFE Order at 3. In short, this analysis demonstrates that Arazi’s COMI as of the Petition Date was Brazil.

*i) As of the Petition Date, the location of Arazi’s assets was Brazil*

16. Arazi’s historical function was to serve the Constellation Group’s floating production, storage and offloading vessels (the “JV FPSO Units”) segment by holding the Group’s equity interests in joint ventures and associated entities that own and operate the JV FPSO Units. VP ¶ 72. This was Arazi’s role as at the Petition Date. *Id.* At the Petition Date, Arazi’s indirect assets —its interest in the JV FPSO Units— were located in Brazilian waters where they were under charter contracts. VP ¶¶ 9, 18 (“All of the JV FPSO Units in which the Company is invested

are currently under contract in Brazilian waters with customers located in Brazil, with the respective charter and service agreements for four of the five JV FPSO Units expiring between 2033 and 2036 and one expiring in 2022.”). Although Arazi sold its interests in the JV FPSO Units in November 2019, the location of a Debtor’s assets, as well as other factors considered for purposes of determining COMI, are only considered at the Petition Date, *i.e.*, December 6, 2018. *Fairfield Sentry*, 714 F.3d at 137.

*ii) The location of Arazi’s headquarters is Luxembourg*

17. The location of Arazi’s headquarters is Luxembourg, where it is incorporated, is a tax resident, and has its registered office. Verified Petition ¶ 72.

*iii) The location of those who actually manage Arazi is Brazil*

18. While both of Arazi’s directors reside in Luxembourg, FOF ¶ 91, as of the Petition Date, Arazi utilized and benefited from the operational coordination activities of the Brazilian Offices, as well as utilizing employee services from Chapter 15 Debtor Petr6leo Constellation. VP ¶ 72. As recognized by this Court, the Constellation Group’s shared management is in Brazil, and the Group’s shared financial, legal, investor relations services and operational coordination activities all take place in Brazil. Verified Petition ¶ 72; Recognition Decision at 285, 291-92. Moreover, this Court found that the Brazilian Offices are of particular importance to the rig-owning entities insofar as all operation and management of their rigs—their primary assets—are run from those locations. Recognition Decision at 288-89, 291-92. Similarly, Arazi—as an entity with operational assets located in Brazil as of the Petition Date—was also operationally managed by the Constellation Group’s management teams in Brazil. Verified Petition ¶ 72.

iv) *Relevant international interpretations weigh in favor of Brazil*

19. The fact that a parent's board of directors operate the high-level management of a group of companies does not dictate its subsidiaries' COMI where other evidence suggests that the subsidiaries' real operations take place elsewhere. Recognition Decision at 277-78; *Videology*, [2018] EWHC (Ch) 2186. Accordingly, even though the board of directors of Arazi's parent (Constellation/Parent) meets in Luxembourg, Recognition Decision at 280, this Court should weigh more heavily the location of Arazi's assets, operations, and management team located in Brazil. This Court previously found that COMI was in Brazil for the drillship-owning entities within the Constellation Group that have day-to-day management and assets in Brazil, despite their places of incorporation and location of their and their parent company's directors, particularly in light of the substantial presence in Brazil of the group as a whole. Recognition Decision at 287-88. Similarly, Arazi had indirect interests over assets, employees and day-to-day operational management in Brazil as of the Petition Date. VP ¶ 72. The location of Arazi's indirect assets, employees and day-to-day operational management in Brazil should, as with the drillship-owning entities and the debtor in *Videology*, weigh more heavily on the Court's COMI analysis than the location of the directors of the Group's ultimate parent in Luxembourg. *Supra* ¶ 15; Recognition Decision at 292 (“[T]he location of the management of the parent holding companies should not be given undue weight.”).

v) *The location of the majority of Arazi's creditors is neutral*

20. Arazi is a limited guarantor of the 2024 Notes. FOF ¶ 95. The indenture trustees of the 2024 Notes are located in New York and there is no evidence in the record regarding the location of the beneficial holders of the 2019 Notes and 2024 Notes. Therefore, this factor does not impact the COMI analysis of Arazi.



vi) *The jurisdiction whose law would apply to most disputes weighs moderately in favor of Brazil*

21. The JV FPSOs Units—Arazi’s Brazilian-located assets as of the Petition Date— are subject to Brazilian regulatory regimes (including contract law, maritime law, employee law, environmental law, and Brazilian regulatory approvals necessary for the operation of drilling rigs). VP ¶ 69. However, by virtue of being incorporated in Luxembourg, Arazi is also subject to Luxembourg laws, regulations and jurisdiction with respect to potential corporate and tax disputes. VP ¶ 72; FOF ¶ 159. This Court has found that operations are more likely to create legal disputes (Recognition Decision at 287) so, accordingly, this factor weighs moderately in favor of a COMI in Brazil, where Arazi’s operations were centered.

vii) *The reasonable expectations of interested third parties weighs in favor of COMI in Brazil and Arazi’s creditors support a finding of COMI in Brazil*

22. As a limited guarantor of the Existing 2024 Notes (such guarantee, the “**Arazi Limited Guarantee**”), Arazi’s key creditor constituency is the holders of those notes. FOF ¶¶ 95-96. The Supplemental Exchange Offer OM cautions Arazi’s investors that Arazi is incorporated under the laws of Luxembourg, “and as such, any insolvency proceedings applicable to them are in principle governed by Luxembourg law.” Third Hershey Declaration, *Supplement to the Exchange Offer Memorandum and Consent Solicitation Statement* dated April 3, 2017 [ECF No. 42-2] (the “**Supplemental Exchange Offer OM**”) at ECF p. 21. However, the Supplemental Exchange Offer OM also explains to investors that restructuring proceedings could be commenced in Brazil due to the Group’s significant ties there, stating:

[i]t is not possible to predict with certainty in which jurisdiction insolvency proceedings would be commenced or the outcome of such proceedings, but it may include, among other jurisdictions, Brazil, where certain decisions of the Company are made, certain members of the Company’s management are located and the location of substantially all of the Company’s business is conducted (and, therefore,

from which substantially all of the operating revenues that may be available to service the Company's obligations under the [2024 Notes] are currently derived).

*Id.*

23. Further, the disclosures relating to the Existing 2024 Notes are replete with references to the Brazilian-centric nature of Arazi's business, expressly describing that Arazi's JV FPSOs are chartered in Brazilian waters, to Brazilian customers (chiefly Petrobras) and confirming that they are subject to the oversight of Brazilian regulatory authorities. Fourth Hershey Declaration [ECF No. 43-1], *Exchange Offer Memorandum and Consent Solicitation Statement* dated April 3, 2017 at ECF p. 20, 21, 23, 40, 45-46, 70, 107.

24. Finally, the Court has found that Arazi's sole creditor constituency, the Consenting 2024 Noteholders, support a finding of COMI in Brazil for the other Recognized Debtors that are subsidiaries of Parent, including the entities that are not incorporated in Brazil.<sup>6</sup> Recognition Decision at 284. Moreover, none of Arazi's creditors have objected to recognition. Accordingly, the factor of creditor support weighs in favor of a COMI in Brazil, along with the majority of the other COMI factors analyzed in the Recognition Decision.

*viii) The nerve center analysis moderately favors a COMI in Brazil*

25. With respect to the rig-owning entities within the Constellation Group, this Court has found that their director's location in the Cayman Islands was outweighed by the presence of day-to-day management and operations in Brazil, particularly where few other factors pointed to a finding of COMI in the director's location. Recognition Decision at 285-86, 288. While Arazi's directors are located in Luxembourg, the central coordination of Arazi's JV FPSO Units occurred in Brazil. VP ¶ 72. Moreover, this Court has found that there are no executives of

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<sup>6</sup> The COMI position of Arazi is distinguishable from the other Luxembourg incorporated debtor in the Group, Constellation Parent, as unlike Constellation Parent, at the Petition Date, Arazi held direct investments in operational entities (*i.e.*, the JV FPSOs).

any of the Constellation Group’s companies located in Luxembourg. Recognition Decision at 288. Rather, as of the Petition Date, all of the executives of the Constellation Group were either in London or Brazil, and “[t]he weight of the evidence also supports the fact that the day-today operations of the management, the Chief Operational Officer, Chief Commercial Officer, Chief Legal Officer, and additional staff in charge of operational finances and investor relations are located in Brazil.” *Id.*

26. Accordingly, notwithstanding that Arazi’s directors are located in Luxembourg, its JV FPSO Units operations were directed and controlled in Brazil via the operational management team located in the Brazilian Offices. Verified Petition ¶ 72.

**B. In the Alternative, the Brazilian RJ Proceeding Should Be Recognized as a “Foreign Nonmain Proceeding” With Respect to Arazi**

27. Alternatively, the Brazilian RJ Proceeding should be recognized as a foreign nonmain proceeding with respect to Arazi. To obtain recognition as a nonmain proceeding, the foreign debtor must establish a degree of stable connections with the jurisdiction to constitute an “establishment.” 11 U.S.C. §§ 1502(2), 1517(b)(2); Recognition Decision at 277. Section 1502(2) defines “[e]stablishment” as “any place of operations where the debtor carries out a nontransitory economic activity.” *See* 11 U.S.C. § 1502(2). Courts consider several factors in identifying an establishment, including economic impact of operations on the market, maintenance of organization over time, objective appearance to creditors of a local presence, and the presence of assets and management. *In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 84-85 (Bankr. S.D.N.Y. 2011), *aff’d* 474 B.R. 88 (S.D.N.Y. 2012). As with COMI, whether the debtor has an “establishment” in a country must be determined at the time of filing the chapter 15 petition. *See Beveridge v. Vidunas (In re O’Reilly)*, 598 B.R. 784, 803 (Bankr. W.D. Pa. 2019) (adopting *Fairfield Sentry* findings that “the presumptive date from which [a c]ourt is to ascertain

[a] debtor’s center of main interests and/or establishment is the date the [c]hapter 15 petition was filed”). Recognition as a nonmain proceeding is appropriate where a debtor falls somewhere between having “activities so centered in the location of the foreign proceeding that the location is the debtor’s COMI” and being “so disconnected from the location of the proceeding that courts should refuse to recognize it at all.” Recognition Decision at 277.

28. This Court found that Luxembourg-incorporated debtor, Constellation Parent, qualified for nonmain recognition in Brazil as all of its subsidiaries had substantial and ongoing business connections to Brazil that provided sufficient nontransitory ties. Recognition Decision at 278, 281-282 (citing *Videology* [2018] (Ch) EWHC 2186) (“[S]hared aspects of the management of the international corporate group provided enough presence in the United States to find that the chapter 11 case was a nonmain proceeding.”)). Similarly, as of the Petition Date, Arazi’s JV FPSO Units operated in Brazilian waters and were operationally managed out of Brazil, by a management team and executives located in Brazil, thereby constituting substantial nontransitory ties to Brazil. Verified Petition ¶ 72. Further to the *Millennium Global* factors, Arazi had assets, management, organization and economic impact in Brazil. *Id.*; *supra* ¶¶ 17, 25. Based on the foregoing, Arazi, like Constellation Parent and the debtor in *Videology*, has sufficient ties to Brazil to substantiate foreign nonmain proceeding recognition if this Court determines its COMI is not in Brazil.

**C. This Court Should Grant Full Force and Effect and Comity to the RJ Plan with Respect to Arazi**

29. This Court has found that the legal predicates for granting full force and effect to the RJ Plan and related relief with respect to the Recognized Debtors within the territorial jurisdiction of the United States are met. FFE Order at X (“The relief granted hereby: (i) is necessary and appropriate in the interests of the public and international comity; (ii) is consistent

with the public policy of the United States; (iii) is available and warranted pursuant to sections 105(a), 1145, 1507(a), 1521(a), and 1525(a) of the Bankruptcy Code; and (iv) will not cause the Applicable Chapter 15 Debtors' creditors or other parties in interest any hardship that is not outweighed by the benefits of granting the relief herein." Accordingly, on December 5, 2019, this Court granted comity to the RJ Plan and related relief with respect to the Recognized Debtors. *See generally id.* Similarly, this Court should grant Arazi the same relief as requested herein and in the proposed order filed concurrently herewith (the "**Proposed Order**"). Such relief is exactly the same as the relief granted to the Recognized Debtors by this Court in the FFE Order and is necessary to avoid creditor actions against Arazi, those who have facilitated the restructuring of Arazi, and the enforcement of the Arazi Limited Guarantee. By contrast, failure to restructure such guarantee could risk derailment of the Constellation Group's already substantially complete restructuring.

30. Section 1521(a) provides courts with discretionary relief to effectuate the purposes of chapter 15 and protect a debtor's assets and creditors' interests and sets forth a non-exhaustive list of such relief. 11 U.S.C. § 1521(a); *In re Avanti Commc'ns Grp. PLC*, 582 B.R. 603, 612 (Bankr. S.D.N.Y. 2018) (Glenn, J.). The Court may also grant discretionary relief to provide "additional assistance" to a foreign representative under the Bankruptcy Code or other applicable U.S. law, which may extend beyond what is permitted by section 1521(a). 11 U.S.C. § 1507(a). Furthermore, section 105(a) permits courts to issue "any order, process or judgment that is necessary and appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The relief requested herein is necessary to complete the Constellation Group's restructuring and is therefore appropriate relief under section 1521(a).

31. As with the Recognized Debtors, granting full force and effect to the RJ Plan with respect to Arazi is necessary and appropriate to give effect to the restructuring of the Constellation Group as a whole, as implemented in accordance with the RJ Plan. Granting this relief to Arazi would permit it to complete the cancelation of the Arazi Limited Guarantee under the Existing 2024 Notes. Failure to implement cancelation of the Arazi Limited Guarantee could invite litigation or other actions by creditors against Arazi. Thus, in addition to granting comity to the RJ Plan with respect to Arazi, for the reasons set forth in the original Enforcement Motion the Directed Parties should be directed and the Authorized Parties should be to take all actions necessary to carry out all actions required of them pursuant to the RJ Plan and Brazilian Confirmation Order, including cancelling the Arazi Limited Guarantee and terminating all obligations of Arazi under the Existing 2024 Notes Indenture and the Existing 2024 Notes. FFE Motion ¶¶ 70-71. Moreover, for the reasons set forth in more detail in the Enforcement Motion, the requested permanent injunction, releases, and exculpations are also necessary and appropriate to prevent dissenting creditors from pursuing opportunistic lawsuits against Arazi and those who have facilitated Arazi's restructuring, seeking to obtain additional recoveries in excess of those provided in the RJ Plan. Enforcement Motion ¶¶ 72-87. Finally, notwithstanding that the Exempt Securities have already been issued pursuant as contemplated by the RJ Plan, the relief granted in the Enforcement Order under section 1145 of the Bankruptcy Code should also be extended to Arazi out of an abundance of caution to ensure that Arazi's solicitation of votes on the RJ Plan, in compliance with Brazilian Bankruptcy Law is exempt from registration procedures that are unduly burdensome and unnecessary under the present circumstances. Enforcement Motion ¶¶ 88-99.

32. The requested relief would not cause undue hardship to Arazi's creditors or other parties in interest, as they would not relinquish any rights or recoveries contemplated by the

RJ Plan, which was overwhelmingly supported by creditors. By contrast, the requested relief would ensure that the anticipated returns to creditors under the RJ Plan are not jeopardized. *See Notice Regarding the Status of the Brazilian RJ Proceeding* [ECF No. 99]. Unlike Olinda, Arazi is not restructuring its guarantee or granting a new guarantee to the restructured debt of the Constellation Group. Rather, the proceeds of the sale of Arazi's assets were already used to partially pay down the bondholders and the remainder was retained to pay for capital and operation expenditures related to the drilling rigs which comprise the bondholders' collateral, as provided under the RJ Plan. *See Update re Closing of Brazilian Restructuring Transactions and Status of Certain Chapter 15 Debtors* [ECF No. 194].

33. Furthermore, as full force and effect orders are not limited to foreign main proceedings, this court should grant the same relief even if it recognizes Arazi's Brazilian RJ Proceeding as a foreign non-main proceeding. *See In re Winsway Enters. Holdings Ltd.*, No. 16-10833 (MG) (Bankr. S.D.N.Y. June 16, 2016) (Glenn., J) [ECF No. 22] at ¶ 2 (granting comity and full force and effect to a scheme in a non-main proceeding); *In re hibu Inc.*, No. 14-70323 (Bankr. E.D.N.Y. Feb. 24, 2014) [ECF No. 29] at ¶ B (same); *see also* FFE Order (enforcing the RJ Plan as to nonmain proceeding of Constellation Parent); Recognition Decision at 272 ("a foreign nonmain proceeding can be granted nearly identical relief as the relief provided to a main proceeding."). As noted above, such relief is necessary to advance the comprehensive restructuring of the Constellation Group.

34. The extension to Arazi of the relief granted to the Recognized Debtors in the FFE Order would promote the objectives and purposes of chapter 15, which are to engender cooperation among foreign courts with respect to restructuring and insolvency proceedings and facilitate cross-border restructurings. *See* 11 U.S.C. §§ 1501(a), 1508; *In re Ocean Rig UDW Inc.*,

570 B.R. 687, 708 (Bankr. S.D.N.Y. 2017) (noting that denial of requested relief would thwart restructuring efforts, “a result that is antithetical to the purposes of chapter 15”); *Hosking v. TPG Capital Mgmt., L.P. (In re Hellas Telecomms. (Lux.) II SCA)*, 555 B.R. 323, 344 (Bankr. S.D.N.Y. 2016) (noting the express purpose of chapter 15 to “provide effective mechanisms for dealing with cases of cross-border insolvency” and fostering cooperation between courts and authorities involved in cross-border cases). The Brazilian RJ Court has confirmed the RJ Plan with respect to Arazi in connection with the broader restructuring of the Constellation Group. The Petitioner respectfully requests that this Court grant full force and effect to the RJ Plan with respect to Arazi and enable the Constellation Group’s restructuring process to be concluded.



Dated: March 6, 2020  
New York, New York

Respectfully submitted,

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**EXHIBIT A**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	)	
In re	)	
	)	Case No. 18-13952 (MG)
Serviços de Petróleo Constellation S.A., <i>et al.</i> , <sup>1</sup>	)	(Jointly Administered)
	)	
Debtors in a Foreign Proceeding.	)	Chapter 15
	)	

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**ORDER (I) APPROVING THE WITHDRAWAL BY THE FOREIGN REPRESENTATIVE OF THE VERIFIED PETITION FOR RECOGNITION OF THE BRAZILIAN RJ PROCEEDING AS TO OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION) [ECF NO. 7] AND DISMISSAL OF ITS CHAPTER 15 CASE AND (II) GRANTING THE FOREIGN REPRESENTATIVE’S RENEWED REQUEST FOR RECOGNITION OF THE BRAZILIAN RJ PROCEEDING AS TO ARAZI S.À.R.L. PURSUANT TO 11 U.S.C. §§ 1515, 1517 AND 1520 AND GIVING FULL FORCE AND EFFECT TO THE BRAZILIAN REORGANIZATION PLAN AS TO ARAZI S.À.R.L. PURSUANT TO 11 U.S.C. §§ 105(A), 1507(A), 1145, 1521(A) AND 1525(A)**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of Andrew Childe in his capacity as the duly-authorized Foreign Representative of the jointly-administered judicial reorganization proceeding (the “**Brazilian RJ Proceeding**”) of Serviços de Petróleo Constellation S.A. and its affiliated debtors (together with its debtor and non-debtor affiliates, the “**Constellation Group**”) pending in the 1st Business Court of Rio de Janeiro (the “**Brazilian RJ Court**”) pursuant to Federal Law No. 11.101 of February 9, 2005 of the laws of the Federative Republic of Brazil (“**Brazilian Bankruptcy Law**”) for entry of an Order (this “**Order**”), after notice and a hearing, granting (I) the withdrawal of the *Verified Petition for Recognition of the Brazilian RJ Proceeding* as to Olinda Star Ltd. (In Provisional Liquidation) [ECF No. 7] (the “**Verified Petition**”) with

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<sup>1</sup> The debtors (the “Chapter 15 Debtors”) in these chapter 15 cases are as follows: Serviços de Petróleo Constellation S.A.; Lone Star Offshore Ltd.; Gold Star Equities Ltd.; Olinda Star Ltd. (in Provisional Liquidation) (“Olinda”); Star International Drilling Limited; Alpha Star Equities Ltd.; Snover International Inc.; Arazi S.à.r.l. (“Arazi”); Constellation Oil Services Holding S.A.; and Constellation Overseas Ltd.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

respect to Chapter 15 Debtor Olinda; (II) the dismissal of the Existing Olinda Chapter 15 Case in accordance with 9006-1(b) of the Local Bankruptcy Rules, (III) as previously requested in the Verified Petition, (A) recognition of the Brazilian RJ Proceeding of Chapter 15 Debtor Arazi as either a “foreign main proceeding” or “foreign nonmain proceeding” pursuant to section 1517 of the Bankruptcy Code; and (B) recognition of the Petitioner as the “foreign representative” (as defined in section 101(24) of the Bankruptcy Code) of Arazi’s Brazilian RJ Proceeding; and (IV) as previously requested in the Enforcement Motion, entry of an order granting full force and effect and comity in the United States to the RJ Plan and Brazilian Confirmation Order with respect to Arazi; and this Court having heard the statements of counsel with respect to the Motion at a hearing before this Court (the “**Hearing**”); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion and all other pleadings and papers in this case establish just cause to grant the relief ordered herein; and after due deliberation:

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

1. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. This Court has jurisdiction to consider this matter and enter this Order pursuant to 28 U.S.C. §§ 157 and 1334 and the **Amended Standing Order of Reference** dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11, 12 Misc. 0032*

(S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

3. Arazi's Brazilian RJ Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

4. Olinda's Brazilian RJ Proceeding is entitled to dismissal by this court.

5. The Petitioner, Arazi and Olinda, as applicable, are entitled to the relief granted hereby.

6. The Petitioner and Arazi, as applicable, are entitled to the Court's cooperation under section 1525(a) of the Bankruptcy Code in implementing the RJ Plan as to Arazi in the form of relief granted by this Order on the terms provided herein. The terms of the RJ Plan, and the process for solicitation of votes on and confirmation of the RJ Plan with respect to Arazi, in each case before the Brazilian RJ Court, provided creditors and parties in interests with appropriate due process and were not manifestly contrary to U.S. public policy.

7. Absent the relief granted hereby to Arazi, the Brazilian RJ Proceeding and the Brazilian RJ Debtors' efforts to consummate the RJ Plan could be impeded by the actions of certain creditors and/or other persons, a result that would be contrary to the purposes of Chapter 15 as set forth, *inter alia*, in section 1501(a) of the Bankruptcy Code. If taken, such actions could threaten, frustrate, delay, and ultimately jeopardize the Brazilian RJ Proceeding and implementation of the RJ Plan, and, as a result, Arazi, its creditors and such other parties in interest would suffer irreparable harm for which there is no adequate remedy at law.

8. Each of the Exempt Securities was offered and sold (or deemed to be offered and sold) by a debtor in the Brazilian RJ Proceeding (the "**Brazilian RJ Debtors**") that is an "affiliate

participating in a joint plan” (within the meaning of such phrase as it is used in section 1145 of the Bankruptcy Code) with Arazi.

9. The Exempt Securities were offered and sold (or deemed to be offered and sold) under the RJ Plan in exchange for pre-petition claims against the Brazilian RJ Debtors, including Arazi (as prepetition primary obligor or as guarantor, as the case may be).

10. It is appropriate, in all circumstances, to exempt the offer and sale (or deemed offer and sale) of the Exempt Securities, and as applicable, the offer and resale of the Exempt Securities by the holders thereof, in each case, from the Registration Requirements of section 1145 of the Bankruptcy Code.

11. The relief granted hereby to Arazi: (i) is essential to the success of the Brazilian RJ Proceeding and the RJ Plan, (ii) is an integral element of the Brazilian RJ Proceeding and the RJ Plan and/or integral to their effectuation, and (iii) confers material benefits on and is in the best interests of Arazi, Olinda and their creditors, including without limitation the bondholders and other unsecured creditors.

12. The relief sought by the Motion in respect of Arazi will not cause undue hardship or inconvenience to any party in interest and, to the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the relief requested to Arazi and its creditors.

13. The relief granted hereby is necessary to effectuate the purposes and objectives of Chapter 15 and to protect Arazi and the interests of its creditors and other parties in interest.

14. Appropriate notice of the filing of, and the Hearing on, the Motion was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

15. The relief granted hereby to Arazi: (i) is necessary and appropriate in the interests of the public and international comity; (ii) is consistent with the public policy of the United States; (iii) is available and warranted pursuant to sections 105(a), 1507(a), 1145, 1515, 1517, 1520, 1521(a), and 1525(a) of the Bankruptcy Code; and (iv) will not cause Arazi's creditors or other parties in interest any hardship that is not outweighed by the benefits of granting the relief herein.

16. For all of the foregoing reasons, and for the reasons stated by the Court on the record of the Hearing, and after due deliberation and sufficient cause appearing therefore, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is granted as provided herein.
2. The Verified Petition<sup>3</sup> is hereby deemed withdrawn with respect to Olinda, and Olinda's Chapter 15 Case is hereby dismissed.
3. Following entry of this Order, Olinda shall no longer be listed as a debtor in the caption of Case No. 18-13952 (MG).
4. The Petitioner is the duly appointed foreign representative of Arazi's Brazilian RJ Proceeding, within the meaning of section 101(24) of the Bankruptcy Code, and is authorized to act on behalf of each of Arazi.
5. The Brazilian RJ Proceeding is granted recognition as the foreign main proceeding of Arazi pursuant to section 1517 of the Bankruptcy Code.
6. The Brazilian Confirmation Order and the RJ Plan, including, for the avoidance of doubt, the RJ Plan Releases, and any amendments, modifications, and all annexes to the RJ Plan, and subject to all terms, conditions, and limitations set forth therein, are hereby recognized, granted

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<sup>3</sup> For the avoidance of doubt, the superseded Verified Petition [ECF No. 3] is also deemed to be withdrawn.

comity and given full force and effect within the territorial jurisdiction of the United States and for purposes of U.S. law with respect to Arazi, and each is binding on all entities (as that term is defined in section 101(15) of the Bankruptcy Code), including all Noteholders, the Directed Parties,<sup>4</sup> and any of their respective successors and assigns.

7. All entities (as that term is defined in section 101(15) of the Bankruptcy Code) subject to this Court’s jurisdiction are permanently enjoined from (i) commencing or taking any action that is in contravention with or would interfere with or impede the administration, implementation and/or consummation of the RJ Plan, the Brazilian Confirmation Order or the terms of this Order and (ii) taking any action, including, without limitation, commencing or continuing any action or legal proceeding (including, without limitation, bringing suit in any court, arbitration, mediation, or any judicial or quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), and including action by way of counterclaim, and from seeking discovery of any nature related to the foregoing, to recover or offset any debt or claims that are extinguished, novated, cancelled, discharged or released under the RJ Plan, the Brazilian Confirmation Order, or as a result of the Brazilian law, against Arazi or its respective property located in the territorial jurisdiction of the United States, the Exempt Parties, the Directed Parties or the Petitioner; *provided, however*, that this injunction will not prevent any entity from (i) taking any action in the Brazilian RJ Proceeding consistent with Brazilian law, including appeals in Brazil related thereto or (ii) pursuing any rights or remedies granted to that entity pursuant to the RJ Plan;

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<sup>4</sup> Collectively, the Directed Parties are (i) Wilmington Trust, National Association (“**Wilmington Trust**”), in its capacity as the indenture trustee of the Prior 2024 Notes, and Wilmington Trust in its capacity as indenture trustee of the Restructured 2024 Notes (Wilmington Trust in its capacity as indenture trustee for the Prior 2024 Notes and Restructured 2024 Notes is referred to as the “**Indenture Trustee**”); (ii) The Depository Trust Company (“**DTC**”) in its capacity as record holder of the Prior 2024 Notes and Restructured 2024 Notes; (iii) Euroclear Bank S.A./N.V. (“**Euroclear**”) and Clearstream Banking, société anonyme (“**Clearstream**”); and (iv) D.F. King & Co., Inc. in its capacity as Information Agent.



*provided further however*, that no action may be taken within the territorial jurisdiction of the United States to confirm or enforce any award or judgement that would otherwise be in violation of this Order without first obtaining leave of this Court.

8. The Directed Parties are directed, and the Authorized Parties are authorized, to take any and all lawful actions that may be necessary to give effect to and implement the RJ Plan and the transactions contemplated thereunder with respect to Arazi, subject to the terms and conditions of the documents under which they have or will be appointed to act.

9. Wilmington Trust, in its capacity as indenture trustee for the Prior 2024 Notes and the Restructured 2024 Notes, is authorized to take the following actions, including on the records of DTC, Euroclear and Clearstream: (i) cancel the Arazi Limited Guarantee and (ii) terminate all obligations of Arazi under the Existing Notes Indenture and the Prior 2024 Notes, and Arazi is directed to provide reasonable cooperation to the Directed Parties for completion of such actions. Upon such cancellation, Wilmington Trust, in its capacity as trustee, transfer agent, paying agent and registrar under the Prior 2024 Notes shall thereafter have no further obligations under the Prior 2024 Notes, provided however, that any provisions that survive discharge under the terms of the Prior 2024 Notes shall continue in effect as provided thereunder unless modified and/or discharged by this Order, the RJ Plan and/or Brazilian law. All rights, remedies and indemnities under the Prior 2024 Notes shall survive cancellation of any 2024 Notes or any related documentation to the extent necessary to implement and enforce cancellation of the Arazi Limited Guarantee.

10. The Directed Parties are exculpated and released from any liability for any action or inaction taken in furtherance of and/or in accordance with the Chapter 15 Cases, this Order, the RJ Plan and/ or the Rights Offering, except for any liability arising from any action or inaction constituting gross negligence, fraud or willful misconduct as determined by this Court.

11. As a condition precedent to the cancellation of the Arazi Limited Guarantee, Arazi (or the Constellation Group on behalf of Arazi) shall pay the reasonable and documented fees, costs and expenses of Wilmington Trust (including, but not limited to, Wilmington Trust's U.S., Brazil and BVI attorneys' fees, costs and expenses) incurred in its capacities as indenture trustee for the Prior 2024 Notes and the Restructured 2024 Notes: (i) in connection with the Brazilian RJ Proceeding, the Applicable Chapter 15 Cases and in connection with the implementation of the transactions provided for in the RJ Plan and this Order, in cash on or before the effective date of this Order and (ii) reimburse Wilmington Trust for any future reasonable and documented fees, costs and expenses that it incurs (including Wilmington Trust's U.S., Brazil and BVI attorneys' fees, costs and expenses) in connection with the implementation of the RJ Plan and this Order when and as would be required by the Prior 2024 Notes Indenture as if such indenture had not been terminated, discharged and satisfied pursuant to the RJ Plan and this Order.

12. Arazi is authorized to use any property and to continue operating any businesses within the territorial jurisdiction of the United States.

13. Pursuant to sections 105, 1521(a)(7), 1507(a) and 1145 of the Bankruptcy Code, (i) the offer and sale (or deemed offer and sale) of the Exempt Securities under the RJ Plan, (ii) the subsequent offer and resale thereof, and (iii) the solicitation of votes on the RJ Plan in compliance with Brazilian Bankruptcy Law with respect to Arazi are exempt from any applicable registration requirements.

14. The Foreign Representative is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and is authorized and empowered and may in his discretion and without further delay take any action and perform any act necessary to implement and effectuate the terms of this Order.

15. No action taken by the Foreign Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the RJ Plan or any order entered in these Chapter 15 Cases or in any adversary proceedings or contested matters in connection therewith, shall be deemed to constitute a waiver of the immunity afforded the Foreign Representative pursuant to sections 306 and 1510 of the Bankruptcy Code.

16. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) other than as expressly provided in this Order, the Petitioner is not subject to any stay of the implementation, enforcement, or realization of the relief granted in this Order; (c) the Petitioner is authorized and empowered, and may, in his discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the RJ Plan and this Order, including using or disposing of any of Arazi's assets located in the territorial jurisdiction of the United States.

17. A copy of this Order, confirmed to be true and correct, shall be served, within seven business days of entry of this Order, by facsimile, electronic mail, or overnight express delivery, upon all notice parties in this case. Such service shall be good and sufficient service and adequate notice for all purposes.

18. In no event shall this Order prevent the implementation of any amendments or modification to the RJ Plan that may be agreed upon by and among the Applicable Chapter 15 Debtors and the applicable creditors and approved by the Brazilian RJ Court (or as otherwise permitted under applicable law).

19. Notwithstanding anything to the contrary contained herein, nothing in this Order, or any other order entered in these Chapter 15 Cases, shall prejudice, curtail, impair, or otherwise adversely affect the rights, claims and interests, if any, of Alperston Capital Limited, Capinvest

Fund Ltd (Bahamas), Universal Investment Fund Ltd (Bahamas), Comercial Perfuradora Delba Baiana Ltda (Brazil), Interoil Representação Ltda (Brazil), or any of their respective affiliates, representatives (in their capacities as such), successors, or assigns (collectively, the “Alperton Parties”) in relation to or arising under or from the Arbitration, the BVI Proceedings (as defined in the Motion), the Amaralina (as defined in the Motion) and Laguna (as defined in the Motion) joint ventures or their respective assets, or the Brazilian RJ Proceeding (collectively, the “Alperton Matters”), including, without limitation and for the avoidance of doubt, the Alperton Parties’ rights, claims, defenses, objections, appeals, and remedies, present or future, if any, in relation to or arising under or from the Alperton Matters, or to confirm, recognize, enforce, or otherwise pursue satisfaction of any interim, partial, final or any award, judgment, or order granted in any proceeding or matter in relation to or arising under or from the Alperton Matters (including, without limitation, the interim measures reinstated by the tribunal convened in the Arbitration pursuant to procedural order number 14, dated November 1, 2019); *provided* that the foregoing shall not prejudice the rights, if any, of the Alperton Parties or the Chapter 15 Debtors to assert their respective arguments and positions in the Arbitration or outside of the territorial jurisdiction of the United States.

20. Notwithstanding anything to the contrary contained herein, nothing in this Order, or any other order entered in these Chapter 15 Cases, shall recognize, grant comity, or otherwise give full force and effect, to a release of, or injunction as to, any rights or claims belonging to the Alperton Parties in relation to or arising under or from the Alperton Matters, or to any exculpation by the Alperton Parties.

21. Nothing in this Order shall limit, impair, or affect the rights of holders (or the agents of holders) of the New Notes.

22. If the RJ Plan is terminated pursuant to its terms or is no longer in effect under Brazilian law (including, without limitation, on account of an order that has the effect of rendering the RJ Plan void *ab initio*) and the RJ Plan remains terminated or no longer in effect under Brazilian law for a period of 60 days (and provided that, for the avoidance of doubt, “termination” does not include completion or consummation of the RJ Plan occurring upon satisfaction of all obligations thereunder), then this Order and all actions contemplated by this Order, together with any subscription packages completed and returned to Wilmington Trust in its capacity as subscription agent for the Rights Offering or otherwise outstanding, shall be null and void and of no force or effect; *provided, however*, that the relief provided in paragraphs 15 and 17 hereof will survive such termination.

23. Nothing in this Order modifies the Order Preserving Alperton’s Rights Protected by the Interim Measures Ordered by the Arbitration Tribunal [ECF No. 176] entered by this Court on November 18, 2019.

24. This Court shall retain jurisdiction with respect to the effect, enforcement, amendment or modification of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2020

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE