

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

<p><b>In re:</b></p> <p><b>BRIGGS &amp; STRATTON CORPORATION, et al.,</b></p> <p><b>Debtors.</b></p>	<p>§ <b>Chapter 11</b></p> <p>§</p> <p>§ <b>Case No. 20-43597-399</b></p> <p>§</p> <p>§ <b>(Jointly Administered)</b></p> <p>§</p> <p>§ Hearing Date: November 9, 2020</p> <p>§ Hearing Time: 10:00 a.m. (Central Time)</p> <p>§ Hearing Location: Courtroom 5 North</p> <p>§ 111 S. 10th St., St. Louis, MO 63102</p>
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**MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §1121(d) TO EXTEND EXCLUSIVE PERIODS**

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

**Background**

1. On July 20, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).



2. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets (the “**Sale Order**”)<sup>1</sup> to Bucephalus Buyer, LLC (the “**Purchaser**”). On September 21, 2020, the Debtors closed the sale transaction.<sup>2</sup> The Debtors continue to honor their post-closing sale obligations, wind down their estates, and otherwise work to conclude these chapter 11 cases.

3. On October 9, 2020, the Debtors filed the *Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* (the “**Plan**”) and related disclosure statement (the “**Disclosure Statement**”) [Docket Nos. 1066 and 1067]. On October 10, 2020, the Debtors filed a motion to approve the Disclosure Statement and procedures for solicitation of votes on the Plan [Docket No. 1071] (the “**Solicitation Motion**”). The Court is scheduled to hold a hearing on November 9, 2020 to consider approval of the Disclosure Statement and the Solicitation Motion. The purpose of the Plan is to effectuate the distribution of remaining cash proceeds of the sale transaction, the disposition and distribution of any remaining estate assets, and the orderly wind-down of the Debtors’ estates. Pursuant to the Plan, a portion of the sale proceeds will be used to pay administrative and priority claims and fund the costs of completing these chapter 11 cases and winding down the Debtors’ estates. Any remaining proceeds and other available cash are expected to be used to provide a recovery for general unsecured claims.

4. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in*

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<sup>1</sup> *Order (I) Authorizing the Sale of the Assets and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 898].

<sup>2</sup> *See Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, And (II) the Occurrence of Closing of the Sale Transaction* [Docket No. 964].

*Support of the Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 51] (the “**Ficks Declaration**”).<sup>3</sup>

### **Jurisdiction**

5. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

6. By this Motion, the Debtors seek entry of an order (the “**Proposed Order**”)<sup>4</sup> pursuant to section 1121 of the Bankruptcy Code, extending the periods during which the Debtors have the exclusive right to file a chapter 11 plan (the “**Exclusive Filing Period**”) and to solicit acceptances thereof (the “**Exclusive Solicitation Period**” and together with the Exclusive Filing period, the “**Exclusive Periods**”) by 90 days through and including February 15, 2021 and April 17, 2021, respectively.

7. This is the Debtors' first request for an extension of the Exclusive Periods as these chapter 11 cases have been pending for only a few months. As demonstrated further below, granting an extension of the Exclusive Periods will help progress these cases. Accordingly, the Debtors request the Court extend the Exclusive Periods by 90 days.

### **Relief Requested Should Be Granted**

#### **A. Exclusive Periods May be Extended for Cause**

8. Under section 1121(d) of the Bankruptcy Code, the Court may extend the Exclusive Periods for cause “on request of a party in interest made within the respective periods

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

<sup>4</sup> Copies of the *Proposed Order* will be made available on the Debtors' case information website at <http://www.kccllc.net/Briggs>.

specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.”

11 U.S.C. § 1121(d).

9. The Bankruptcy Code neither defines the term “cause” for purposes of section 1121(d) nor establishes formal criteria for an extension. The legislative history of section 1121 of the Bankruptcy Code indicates, however, that it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95–595, at 231–32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963 (noting that Congress intended to give Bankruptcy Courts great flexibility to protect a debtor’s interests by allowing a debtor an unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest); *In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987) (“Any bankruptcy court involved in an assessment of whether ‘cause’ exists should be mindful of the legislative goal behind § 1121.”); *In re Mirant Corp.*, Ch. 11 Case No. 4-04-CV-476-A, 2004 WL 2250986, at \*2 (N.D. Tex. Sept. 30, 2004) (“In virtually every case where an extension has been granted, the debtor showed substantial progress had been made in negotiations toward reorganization.”).

10. The broad discretion conferred on the Court in these circumstances enables the Court to consider a variety of factors to assess the totality of circumstances in each case. *In re Adelpia Commc’ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (identifying factors courts consider in determining whether to extend exclusivity); *see also In re Hoffinger Indus., Inc.*, 292 B.R. 639, 643–44 (B.A.P. 8th Cir. 2003) (identifying the *Adelpia* factors as factors to consider in determining whether cause exists to extend exclusivity); *In re New Millennium Mgmt., LLC*, No. 13-35719-H3-11, 2014 WL 792115, at \*6 (Bankr. S.D. Tex. Feb. 25, 2014) (same); *In re*

*Friedman's, Inc.*, 336 B.R. 884, 888 (Bankr. S.D. Ga. 2005) (same); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (same); *In re Washington-St. Tammany Elec. Co-op., Inc.*, 97 B.R. 852, 854 (E.D. La. 1989) (noting that the decision to extend exclusivity “rests with the discretion of the Court”).

11. These non-exclusive factors include:

- (i) the size and complexity of the debtor's case;
- (ii) the necessity for sufficient time to permit the debtor to negotiate a chapter 11 plan and prepare adequate information;
- (iii) the existence of good faith progress towards reorganization;
- (iv) the fact that the debtor is paying its bills as they become due;
- (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (vi) whether the debtor has made progress in negotiations with its creditors;
- (vii) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
- (viii) whether an unresolved contingency exists.

*See, e.g., Millennium Mgmt.*, 2014 WL 792115, at \*6; *see also Adelpia*, 352 B.R. at 587 (noting that the factors listed above are “objective factors which courts historically have considered in making determinations of this character”); *see also In re Borders Grp., Inc.*, 460 B.R. 818, 822 (Bankr. S.D.N.Y. 2011) (evaluating the factors set forth in *Adelpia* to hold that the debtor established cause to extend exclusivity).

12. Not all factors are relevant to every case, and courts tend to use a relevant subset of the above factors in determining whether cause exists to grant an exclusivity extension in a particular chapter 11 case. *See, e.g., Hoffinger Indus.*, 292 B.R. at 644 (“It is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate

weight to each.”); *In re Wisconsin Barge Line, Inc.*, 78 B.R. 946, 948 (Bankr. E.D. Mo. 1987) (finding cause to extend exclusivity where the cases were large and complex and the debtors acted diligently by having on file a plan capable of confirmation); *In re Serv. Merch. Co., Inc.*, 256 B.R. 744, 751-54 (Bankr. M.D. Tenn. 2000) (finding cause to extend where the debtors established six of the aforementioned factors); *Express One Int’l.*, 194 B.R. at 100 (identifying four of the factors as relevant in determining whether “cause” existed to extend exclusivity); *see also In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997) (“When the Court is determining whether to terminate a debtor’s exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward. And that is a practical call that can override a mere toting up of the factors.”).

13. Moreover, courts regularly grant a debtor’s first request for an extension of the debtor’s exclusive period to file a chapter 11 plan. *See In re Apex Pharm., Inc.*, 203 B.R. 432, 441 (N.D. Ind. 1996) (“It is true that during the initial 120-day period in which debtors have an exclusive right to file a plan of reorganization . . . the bankruptcy courts apply a lesser standard in determining whether the burden of showing ‘a reasonable possibility of a successful reorganization within a reasonable time’ has been satisfied.”) (citation omitted); *see also In re Borders Grp., Inc.*, 460 B.R. at 825 (same).

#### **B. Cause Exists to Extend Exclusive Periods**

14. As set forth below, an extension of each of the Exclusive Periods by 90 days is appropriate, in the best interest of the Debtors’ stakeholders, and consistent with the intent and purpose of chapter 11 of the Bankruptcy Code. The requested extension of the Exclusive Periods will enable the Debtors to pursue confirmation and implementation of the Plan without interruption. Accordingly, application of the relevant above factors to the facts of these chapter

11 cases demonstrates that ample cause exists to grant the reasonable and limited extension of the Exclusive Periods requested herein.

15. Since the Petition Date, the Debtors have worked closely and in good faith with their key constituents to implement the Debtors' restructuring through a value-maximizing transaction and, ultimately, through a consensual liquidating plan. Notwithstanding the size and complexity of the Debtors' business and capital structure at the inception of these chapter 11 cases, the Debtors were able to quickly navigate and implement a restructuring strategy that has been supported by good faith negotiations and progress along the way.

16. The Exclusive Periods established by Congress were incorporated into the Bankruptcy Code to afford a full and fair opportunity for a debtor to propose a chapter 11 plan and solicit acceptances of such plan without the deterioration and disruption of a debtor's business that might be caused by the filing of multiple competing plans. The Debtors are well on their way down this path, given that (i) the Debtors reached a key settlement, embodied in the Sale Order, with the Purchaser, the Creditors' Committee, the Pension Benefit Guaranty Corporation (the "PBGC"), JP Morgan Chase Bank, N.A. as administrative and collateral agent under the DIP Credit Agreement, and the DIP ABL Secured Parties<sup>5</sup> which resolved potential objections to the sale transaction, the Creditors' Committee's potential challenges to the Prepetition Secured Parties' liens, and certain issues associated with the PBGC's potential claims in these cases, (ii) the Debtors filed the Plan and Disclosure Statement, and (iii) a hearing to consider approval of the Disclosure Statement is scheduled for November 9, 2020. While the Debtors' chapter 11 cases are only three months old, the Debtors have sold substantially all of their assets and are on the cusp

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<sup>5</sup> As defined in the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling Final Hearing and (VII) Granting Related Relief* [Docket No. 35].

of successfully completing their restructuring once the Plan is confirmed and goes effective, and the Debtors can implement the wind-down of their estates. Given the nature and stage of these chapter 11 cases and the fact that the Plan is supported by the Creditors' Committee, it is highly unlikely any party will come forward with a viable competing plan.

17. As indicated in the Plan, general unsecured creditors are the only parties entitled to vote on the Plan. Prior to the filing of the Plan, the Debtors negotiated its terms with the Creditors' Committee, which acts as a fiduciary for all general unsecured creditors in these chapter 11 cases, including exchanging multiple drafts of the Plan and Disclosure Statement, incorporating changes, and aligning on timing for confirmation, and the Creditors' Committee approved the form and substance of the Disclosure Statement and Plan. The Plan provides a recovery to general unsecured creditors and is superior to a conversion to chapter 7 or any other alternative. Thus, there is a strong basis to believe that the general unsecured creditors will vote to accept the Plan and the Debtors have a viable path to confirmation.

18. The facts in these cases are more than sufficient to support a finding of "cause" to extend the Exclusive Periods. Therefore, it is appropriate for the Court to extend the Exclusive Periods for a brief period to allow the Debtors to be given a full and fair opportunity to continue their good faith efforts to confirm the Plan, without the risk of distraction of any competing plan proposals, and the relief requested herein should be granted.

19. For the foregoing reasons, an extension of the Exclusive Periods is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should extend the Exclusive Periods.

#### **Reservation of Rights**

20. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the



Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

### **Notice**

21. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes; (v) the United States Attorney's Office for the Eastern District of Missouri; (vi) Brown Rudnick LLP (Attn: Osaka P. Lashko, Esq.), as counsel to the Creditors' Committee; (vii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (viii) any other party entitled to notice pursuant to Local Rule 9013-3(E) (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(E)(1).

### **No Previous Request**

22. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: October 23, 2020  
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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