

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
IEH AUTO PARTS HOLDINGS LLC, *et al.*,<sup>1</sup> ) Case No. 23-90054 (CML)  
)  
Debtors. ) (Jointly Administered)  
\_\_\_\_\_)

DEBTORS’ MOTION FOR ENTRY OF AN  
ORDER TO EXTEND THEIR EXCLUSIVITY PERIODS TO  
FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF

**If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion:<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order substantially in the form attached hereto (the “Order”), (a) extending by 120 days the period during which the Debtors have the exclusive

<sup>1</sup> The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

<sup>2</sup> On January 31, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the Declaration of Michael Neyrey, Chief Executive Officer of IEH Auto Parts Holding LLC, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions (the “First Day Declaration”).



right to file a chapter 11 plan (the “Filing Exclusivity Period”), through and including September 28, 2023, and the period during which the Debtors have the exclusive right to solicit a chapter 11 plan filed during the Filing Exclusivity Period (the “Solicitation Exclusivity Period” and, together with the Filing Exclusivity Period, the “Exclusivity Periods”) through and including November 28, 2023, without prejudice to the Debtors’ rights to see further extensions of the Exclusivity Periods, and (b) granting related relief.

### **Preliminary Statement**

2. Absent the relief requested in this motion, the Debtors’ Filing Exclusivity Period terminates on May 31, 2023, and the Solicitation Exclusivity Period expires July 31, 2023. To ensure that the Debtors maintain exclusivity while continuing to work to solicit and confirm the Plan, the Debtors are seeking to extend the Exclusivity Periods by 120 days.

3. The Debtors have made substantial progress to date and remain focused on exiting these chapter 11 cases. The extension of the Exclusivity Periods is necessary to allow the Debtors to solicit and confirm the Plan and emerge from chapter 11 without the risk of delay, disruption, and the additional costs that could follow an expiration of the Exclusivity Periods. Moreover, the Debtors’ actions and efforts thus far in these chapter 11 cases clearly exhibit that cause exists to warrant the requested extension of the Exclusivity Periods.

### **Jurisdiction and Venue**

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b). The Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the Parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The basis for the relief requested herein is section 1121 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

**Basis for Relief**

7. A debtor has the exclusive right to propose a chapter 11 plan for the first 120 days of a chapter 11 case pursuant to section 1121(b) of the Bankruptcy Code. In these chapter 11 cases, the Filing Exclusivity Period will expire on May 31, 2023 and the Solicitation Exclusivity Period will expire on July 31, 2023, absent further order of the Court. The Debtors seek an extension of the Exclusivity Periods to preserve their exclusive right to file and solicit a plan of reorganization.

8. Section 1121(d)(1) of the Bankruptcy Code permits a court to extend a debtor’s exclusivity periods to file and solicit a plan “for cause.”<sup>3</sup> Specifically, section 1121(d) provides that “on request of a party in interest made within the respective periods . . . 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.”<sup>4</sup> Although the Bankruptcy Code does not define “cause,” bankruptcy courts have the discretion to extend exclusivity to promote the orderly, consensual, and successful reorganization of a debtor’s affairs.<sup>5</sup>

9. Courts within the Fifth Circuit and in other jurisdictions have held that the decision to extend exclusivity periods is left to the sound discretion of the bankruptcy court and should be

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<sup>3</sup> See 11 U.S.C. § 1121(d).

<sup>4</sup> *Id.*

<sup>5</sup> See *In re Timbers of Inwood Forest Assocs., Ltd.*, 808 F.2d 63, 372 (5th Cir. 1987) (noting that the meaning of “cause” under section 1121 should be viewed in context of the Bankruptcy Code’s goal of fostering reorganization).

based on the totality of the circumstances in each case.<sup>6</sup> In particular, courts within the Fifth Circuit and other jurisdictions examine a number of factors in determining whether “cause” exists to extend a debtor’s exclusive plan filing period, including:

- a. the size and complexity of the case;
- b. the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- c. whether the debtor has made progress in negotiations with its creditors;
- d. the existence of good faith progress toward reorganization;
- e. whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor’s reorganization demands;
- f. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- g. the fact that the debtor is paying its bills as they become due;
- h. the amount of time which has elapsed in the case; and/or
- i. whether an unresolved contingency exists.<sup>7</sup>

10. Not all factors are relevant to every case, and the existence of even one of the above-listed factors may be sufficient to extend a debtor’s exclusivity periods.<sup>8</sup>

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<sup>6</sup> See *In re Mirant Corp.*, No. 404-CV-476-A, 2004 WL 2250986, at \*3 (N.D. Tex. Sept. 30, 2004) (noting that the decision to extend exclusivity “lies within the bankruptcy court’s discretion”); *In re Express One Int’l, Inc.*, 194 B.R. 98, 100-01 (Bankr. E.D. Tex. 1996) (extending exclusivity based on the totality of the circumstances).

<sup>7</sup> See, e.g., *In re New Millennium Mgmt., LLC*, No. 13-35719 (LZP), 2014 WL 792115, at \*6 (Bankr. S.D. Tex. Feb. 25, 2014) (listing factors relevant to whether “cause” exists to extend exclusivity periods).

<sup>8</sup> See, e.g., *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (listing all nine factors later set forth in *Adelphia*, but determining “cause” to extend exclusivity existed without finding that every factor was met); see also *In the Matter of Excel Maritime Carriers Ltd.*, No. 13-23060-RDD, 2013 WL 5155040, at \*2 (Bankr. S.D.N.Y. Sept. 13, 2013) (explaining that the relevance of the factors is context-dependent and that “the ultimate consideration for the Court was what will best move the case forward in the best interest of all parties”).

11. Although the party seeking an exclusivity extension bears the burden of demonstrating cause, courts have applied a more lenient standard when determining whether to grant a debtor's first exclusivity request.<sup>9</sup>

12. The Debtors' substantial progress in this chapter 11 case supports the extension of the Exclusivity Periods. Over the last few months, the Debtors have undertaken a number of significant steps to ensure the Debtors' swift confirmation of their chapter 11 Plan, including the following:

- ***Mediation and Settlement.*** On April 19, 2023, the Debtors, along with American Entertainment Properties Corp. (the "DIP Lender"), and the official committee of unsecured creditors in these chapter 11 cases (the "Committee"), filed, and the Court entered, the stipulation and agreed order appointing Judge David R. Jones as a mediator to negotiate a consensual resolution of certain issues and disputes relating to the Plan, the final order approving the DIP Facility, and sale of the Debtors' assets. With the guidance of the Judge David R. Jones, the Parties reached a settlement embodied in the *Order Approving the Settlement Between the IEH Debtors, AEP, PEP Boys, the Committee, and the Committee Members* [Docket No. 469] (the "9019 Order").
- ***Plan, and Disclosure Statement.*** On May 2, 2023, the Debtors filed the *First Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 465] (as amended, supplemented, or modified from time to time, the "Combined Plan and Disclosure Statement"). The terms of the 9019 Order were incorporated into the Combined Plan and Disclosure Statement.
- ***Disclosure Statement Conditionally Approved.*** On May 2, 2023, the Court entered an order conditionally approving the Disclosure Statement and authorized the Debtors to solicit votes on the Plan [Docket No. 474].
- ***DIP Facility.*** On May 3, 2023, the Court entered the Final Order (I) Authorizing Post-Petition Financing Secured by Senior Liens, (II) Authorizing the Debtors to Use Cash Collateral; (III) Granting Adequate Protection, and (IV) Granting Related Relief [Docket No. 478].

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<sup>9</sup> See *Mirant*, 2004 WL, at \*2 ("The debtor's burden gets heavier with each extension it seeks as well as the longer the period of exclusivity lasts.").

13. An objective analysis of the relevant factors demonstrates that the Debtors are doing everything they should be doing as chapter 11 debtors to facilitate a successful conclusion to this complex chapter 11 case. Accordingly, the Debtors respectfully submit that sufficient cause exists to extend the Exclusivity Periods as provided herein.

**Notice**

14. The Debtors will provide notice of this Motion to: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Lender; (d) counsel to the DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the Environmental Protection Agency; (j) other governmental agencies having a regulatory or statutory interest in these cases; (k) counsel to the Committee; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. In view of the nature of the relief requested, no other or further notice need be provided.

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

May 4, 2023

*/s/ Veronica A. Polnick*

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**JACKSON WALKER LLP**

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

Vienna Anaya (TX Bar No. 24091225)

Emily Meraia (TX Bar No. 24129307)

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: [mcavanaugh@jw.com](mailto:mcavanaugh@jw.com)

[vpolnick@jw.com](mailto:vpolnick@jw.com)

[vanaya@jw.com](mailto:vanaya@jw.com)

[emeraia@jw.com](mailto:emeraia@jw.com)

*Counsel to the Debtors  
and Debtors in Possession*

**Certificate of Service**

I certify that on May 4, 2023 I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Veronica A. Polnick*

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Veronica A. Polnick

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	)	
In re:	)	Chapter 11
	)	
IEH AUTO PARTS HOLDINGS LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90054 (CML)
	)	
Debtors.	)	(Jointly Administered)
	)	<b>Re: Docket No.</b> _____

**ORDER EXTENDING DEBTORS’ EXCLUSIVITY PERIODS  
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), authorizing the Debtors to extend the periods during which the Debtors have the exclusive right to file a chapter 11 plan and to solicit a plan filed during the Filing Exclusivity Period, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and

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<sup>1</sup> The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

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

opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is ORDERED THAT:

1. The Filing Exclusivity Period is extended through and including September 28, 2023.

2. The Solicitation Exclusivity Period is extended through and including November 28, 2023.

3. Entry of this Order is without prejudice to the Debtors' right to seek from this Court such additional and further extensions of the Exclusivity Periods within which to file and solicit acceptance of a plan of reorganization as may be necessary or appropriate.

4. Notice of the Motion as provided therein shall be deemed good and sufficient and satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2023

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CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE