

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
PUMPKIN PATCH LLC, ¹)	Case No. 09-12200 (BLS)
)	Objection Deadline: March 9, 2010 at 4:00 p.m. EST
Debtor.)	Hearing Date: April 7, 2010 at 10:15 a.m. EDT
)	

**DEBTOR’S SECOND MOTION FOR AN ORDER EXTENDING THE
EXCLUSIVE PERIODS DURING WHICH DEBTOR MAY FILE
AND SOLICIT ACCEPTANCES OF A PLAN OF REORGANIZATION
PURSUANT TO 11 U.S.C. § 1121(d)**

Pumpkin Patch LLC, debtor and debtor-in-possession in the above-captioned case (the “Debtor”), by and through undersigned counsel, hereby submits Debtor’s Motion for an Order Extending the Exclusive Periods During Which Debtor May File and Solicit Acceptances of a Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) (the “Motion”). In support of the Motion, the Debtor respectfully states as follows:

BACKGROUND

1. On June 29, 2009 (the “Petition Date”), the Debtor commenced this case (the “Case”) by filing a petition under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

¹ The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 837 15th Street, #D, Santa Monica, CA 90403.

2. The Debtor is authorized to continue to operate its business and manage its properties as a debtor-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. The Office of the United States Trustee has not appointed an official committee of unsecured creditors in this case [D.I. 55]. No trustee or examiner has been appointed in this case.

4. On October 13, 2009, this Court entered that certain Order Granting Debtor's Motion For an Order Extending the Exclusive Periods During Which Debtor May File and Solicit Acceptances of a Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) (the "Initial Extension Order") [D.I. 155]. Under the Initial Extension Order, the Debtor's exclusive periods to file and solicit a plan were extended through and including February 24, 2010 and April 26, 2010, respectively.

JURISDICTION

5. This 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 this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory basis for the relief requested herein is Bankruptcy Code section 1121(d).

RELIEF REQUESTED

7. By the Motion, the Debtor seeks the entry of an order (i) further extending the Plan Period (defined below) until May 25, 2010, a date that is 90 days after the expiration of the current Plan Period, and the Solicitation Period (defined

below) until July 26, 2010, a date that is 60 days after the expiration of the proposed 120 day extension of the current Plan Period. If granted, the extension of the Exclusive Periods (defined below) will be without prejudice to (i) the right of the Debtor to seek further extensions of the Exclusive Periods or (ii) the right of any party in interest to seek to reduce the Exclusive Periods for cause.

BASIS FOR RELIEF

8. Bankruptcy Code section 1121(b) provides for an initial 120-day period after the Petition Date (the “Plan Period”) within which a debtor has the exclusive right to file a plan or plans of reorganization. Bankruptcy Code section 1121(c) further provides for an initial 180-day period after the Petition Date (the “Solicitation Period” and, together with the Plan Period, the “Exclusive Periods”) within which a debtor has the exclusive right to solicit and obtain acceptances of a plan filed by such debtor during the Plan Period. Bankruptcy Code section 1121(d) provides that the Court may increase or reduce the Exclusive Periods.

9. Since the Petition Date, the Debtor has worked diligently to restructure its operations so as to formulate a viable plan of reorganization. Among other things, by an order dated August 14, 2009, this Court established a general bar date in this case of October 15, 2009, and a governmental bar date of December 28, 2009 [D.I. 126]. The Debtor has been reconciling claims and anticipates filing objections to certain claims that cannot be reconciled. The Debtor’s restructuring work is ongoing, and the Debtor hopes to propose a plan in the near future.

10. Accordingly, the Debtors request that the Court (a) extend the Plan Period through and including May 25, 2010, a date that is 120 days after the expiration of the current Plan Period, and the Solicitation Period until July 26, 2010 a date that is 60 days after the expiration of the proposed 120 day extension of the current Plan Period; and (b) prohibit any party, other than the Debtor, from filing a competing plan and/or soliciting acceptances of any such competing plan during the extended Exclusive Periods.

APPLICABLE AUTHORITY

11. Under Bankruptcy Code section 1121(d), the Court may extend the Exclusive Periods for cause. Specifically, Bankruptcy Code section 1121(d) provides

[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

12. Courts have identified several key factors relevant to a determination of whether cause exists under Bankruptcy Code section 1121(d), including the following:

- a. The size and complexity of a debtor's case;
- b. The amount of time that has elapsed since the debtor filed its bankruptcy case;
- c. Whether unresolved contingencies exist that affect the debtor's ability to reorganize;

- d. The debtor's progress in resolving issues facing its estate; and
- e. Whether an extension of time will harm the debtor's creditors or other interested parties.

See In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

13. In determining whether to grant a requested extension of exclusivity, courts also consider whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. See McLean, 87 B.R. at 833-34; In re Texaco, Inc., 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

14. In evaluating whether an extension under Bankruptcy Code section 1121(d) is warranted, courts are given maximum flexibility to review the particular facts and circumstances of each case. See In re Amko Plastics, Inc., 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (“[A]pplying the ‘flexibility’ in dealing with the question of extension of exclusivity which the cases suggest . . . , we hold that debtor has shown cause for the extension.”); In re Pub. Serv. Co., 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent [is] to promote maximum flexibility.”); H.R. Rep. No. 95-595, at 232 (1978) (“[T]he bill allows the flexibility for individual cases that is unavailable today.”), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

15. As set forth below, the 120-day extension of the Exclusive Periods is warranted here because, among other things, an extension of the Exclusive Periods will give the Debtors a reasonable opportunity to appropriately restructure its business, solicit votes on the Plan, confirm the Plan, and consummate the Plan without prejudicing any party in interest.

A. The Extension Sought Will Advance the Debtor's Restructuring and Will Not Harm any Party.

16. The Motion is the Debtor's second request for an extension of the Exclusive Periods. To terminate the Exclusive Periods at this point would deny the Debtor a meaningful opportunity to solicit and ultimately consummate a plan and, thus, would be antithetical to the purpose of chapter 11.

17. Debtor is presently in the process of implementing its marketing plan in light of the store closings that have occurred post-petition. The implementation of this strategy in the current challenging retailing environment has taken considerable effort for the Debtor and its professionals. At present, it is critical to stabilize Debtor's operations and to allow the Debtor and its professionals to make an assessment of the best course for the future. Granting the requested extension of exclusivity under these circumstances will not cause any harm to creditors of the estate, and, to the extent Debtor's marketing program is successful, all constituents of the estate will benefit.

18. Additionally, the Debtor has taken steps to down-size and streamline its operations post-petition. Extending exclusivity as requested will allow the Debtor to assess the results of these changes.

19. Moreover, termination of the Exclusive Periods at this juncture could give rise to the threat of multiple plans. Any litigation with respect to competing plans and resulting administrative expenses would serve only to decrease recoveries to the Debtor's creditors, significantly delaying, if not undermining entirely, the Debtor's ability to confirm any plan in these bankruptcy cases.

20. Given the consequences for the Debtors if the relief requested herein is not granted, the requested extension of the Exclusive Periods will not prejudice the legitimate interests of any party in interest in the Case. Rather, the extension will further the Debtor's effort to preserve value and avoid unnecessary and wasteful litigation.

21. The request for an extension of the Exclusive Periods set forth herein is modest, particularly in light of the complexity of the Case and the progress demonstrated by the Debtor in the prosecution of the Case. See, e.g., In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. Oct. 9, 2007); In re Ultimate Elecs., Inc., Case No. 05-10104 (PJW) (Bankr. D. Del. June 1, 2005).

22. In sum, the requested extension of the Exclusive Periods will facilitate the Debtor's restructuring efforts by providing the Debtor with a full and fair opportunity to draft a viable plan of reorganization. It is in the best interests of the Debtor, the estate and all creditors to obtain a further extension of the Exclusive

Periods to ensure the Debtor with sufficient time to solicit, confirm, and consummate a plan without any distraction of a potential competing plan. Accordingly, the Debtor believes that the requested extension is warranted and, indeed, appropriate under the circumstances.

NOTICE AND NO PRIOR REQUEST

23. Notice of the Motion has been provided to the following parties: (i) counsel to the Office of the United States Trustee; and (iii) all parties requesting notice in this case pursuant to Federal Rule of Bankruptcy Procedure 2002. In light of the nature of the relief requested, the Debtor submits that no other or further notice is necessary.

24. No previous request for the relief sought by the Motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtor requests the Court enter an order substantially in the form attached hereto: (i) extending the Plan Period through and including May 25, 2010 and the Solicitation Period through and including July 26, 2010; and (ii) granting such other and further relief as is just and proper.

Dated: February 23, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

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Counsel to the Debtor and Debtor-in-Possession

A HEARING ON THE MOTION WILL BE HELD ON **APRIL 7, 2010 AT 10:15 A.M.**, ONLY IF OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 23, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
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PUMPKIN PATCH LLC, ¹)	Case No. 09-12200 (BLS)
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Debtor.)	Re: D.I. _____
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**ORDER GRANTING DEBTOR’S SECOND MOTION FOR AN ORDER
EXTENDING THE EXCLUSIVE PERIODS DURING WHICH DEBTOR
MAY FILE AND SOLICIT ACCEPTANCES OF A PLAN OF
REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d)**

Upon the Debtor’s Motion for an Order Extending the Exclusive Periods During Which Debtor May File and Solicit Acceptances of a Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) (the “Motion”); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors and all parties-in-interest; and the Court having determined that the legal

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and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

1. ORDERED that the relief requested in the Motion is hereby GRANTED; and it is further

2. ORDERED that the Plan Period² is hereby extended through and including May 25, 2010 and the Solicitation Period is hereby extended through and including July 26, 2010; and it is further

3. ORDERED that nothing herein shall be construed to limit the Debtor's right to seek further extensions of time under 11 U.S.C. § 1121; and it is further

4. ORDERED that the Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: _____, 2010

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge

² Capitalized terms not herein defined shall have the same meaning ascribed to them in the Motion.