

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Vitamin World, Inc., <i>et al.</i> , ¹	)	Case No. 17-11933 (KJC)
Debtors.	)	Jointly Administered
	)	Objection Deadline: January 18, 2018 at 4:00 p.m. (EST)
	)	Hearing Date: February 21, 2018 at 2:30 p.m. (EST)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
EXTENDING THE DEBTORS' EXCLUSIVE PERIODS TO FILE
A CHAPTER 11 PLAN AND SOLICIT VOTES THEREON**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby file this motion (the “Motion”), pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), for entry of an order: (a) extending the period in which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”) by 90 days, through and including April 9, 2018; and (b) extending the period in which the Debtors have the exclusive right to solicit acceptances of the chapter 11 plan (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”) by 90 days, through and including June 8, 2018. In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core

¹ Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Vitamin World, Inc. (2283); VWRE Holdings, Inc. (8915); VW Interholdings, Inc. (4744); VW Online, Inc. (8763); Precision Engineered Limited (USA) (0916); Vitamin World (V.I.), Inc. (9839); Vitamin Depot, LLC (6747); Vitamin World of Guam, LLC (2056); and Nutrition Warehouse, Inc. (5095). Debtors’ mailing address is 4320 Veterans Highway, Holbrook, NY 11741.

proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this judicial district under 28 U.S.C. §§ 1408 and 1409. The Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion if 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.

2. The statutory predicates for the relief requested herein are sections 105(a) and 1121(d) of the Bankruptcy Code.

Background

3. On September 11, 2017 (the "Petition Date"), each Debtor commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors are a leading specialty retailer in the vitamins, minerals, herbs and supplements ("VMHS") market. The Debtors offer products across all major VMHS and sports nutrition categories, including supplements, active nutrition, multiples, letter vitamins, health and beauty items, herbs, minerals, food and specialty items.

5. During 2017, the Debtors' liquidity was constrained by significant supply chain and ingredient availability disruptions, a struggling retail market, above-market rents and under-performing retail stores. The Debtors filed these Chapter 11 Cases to pursue a restructuring of their balance sheets and operations.

6. A detailed description of the Debtors' businesses and operations, and the events leading to the commencement of these Chapter 11 Cases, is provided in the *Declaration of Frank Conley in Support of Debtors' Chapter 11 Petitions and First Day Motions* [D.I. 2] and the

Supplement to Declaration of Frank Conley in Support of Debtors' Chapter 11 Petitions and First Day Motions [D.I. 161], and incorporated herein by reference.

7. Unfortunately, the Debtors were not able to achieve the operation efficiencies on the timeline they had hoped. In early November of 2017, the Debtors made the difficult, but necessary, decision to pivot their Chapter 11 Cases to sale cases under section 363 of the Bankruptcy Code.

8. In November, the Debtors obtained Court approval [D.I.439] to begin liquidating their inventory (the "GOB Inventory") at approximately 122 retail locations (the "GOB Leased Locations").

9. On December 22, 2017, the Court entered an order [D.I. 553] (the "Sale Order") approving the sale (the "Going Concern Sale" or the "Sale") of substantially all of the Debtors' assets, excluding the GOB Inventory, to Vitamin World USA Corporation (the "Buyer") in accordance with an asset purchase agreement.

10. The Sale is expected to close on or about January 19, 2018. The Debtors are currently working with the Buyer to get ready for the closing of the Sale.

11. On January 5, 2018, the Debtors sold the remaining GOB Inventory to the Buyer and, on December 28, 2017, filed a motion [D.I.560] to reject the leases for the GOB Leased Locations under section 365 of the Bankruptcy Code.

12. Currently, the Debtors' Exclusive Filing Period is scheduled to expire on January 9, 2018 and the Debtors' current Exclusive Solicitation Period is scheduled to expire on March 10, 2018. To ensure that these Chapter 11 Cases to continue to progress in an effective and efficient manner, the Debtors seek the requested extensions so that they can work towards a

consensual chapter 11 plan while also continuing to focus on transitioning the Debtors' operations and other pressing issues arising in these cases.

Relief Requested

13. By this Motion, the Debtors seek the entry of an Order, pursuant to sections 105(a) and 1121(d) of the Bankruptcy Code, (a) extending the Debtors' Exclusive Filing Period by 90 days, through and including April 9, 2018, and (b) extending the Debtors' Exclusive Solicitation Period by 90 days, through and including June 8, 2018.

Basis for Relief Requested

14. Section 1121(b) of the Bankruptcy Code provides that "only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter." 11 U.S.C. § 121(b). Sections 1121(c)(2) and (3) further provide, in relevant part, that a party in interest may file a plan if and only if "the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter" or "the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief." See 11 U.S.C. § 1121(c)(2)-(3).

15. Section 1121(d)(1) provides, in relevant part:

[O]n request of a party in interest made within the respective periods 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)(1).

16. Pursuant to section 1121(d)(2), the 120-day Exclusive Filing Period may not be extended beyond a date that is 18 months after the Petition Date, and the 180-day Exclusive Solicitation Period may not be extended beyond a date that is 20 months after the Petition Date. See 11 U.S.C. § 1121(d)(2). In the present case, the requested extensions of the Exclusive

Periods, if granted, do not extend beyond these deadlines. Thus, this Motion is consistent with the requirements of Bankruptcy Code section 1121(d)(2).

I. A Court May Extend the Exclusive Periods for “Cause” under Section 1121(d) of the Bankruptcy Code

17. As indicated above, section 1121(d)(1) of the Bankruptcy Code provides that a court may extend Exclusive Periods for “cause” shown. See 11 U.S.C. § 1121(d); In re Pine Run Trust, Inc., 67 B.R. 432, 433 (Bankr. E.D. Pa. 1986). The term “cause” is not defined in the Bankruptcy Code; rather, courts have broad discretion to determine “cause” based on the facts and circumstances of each case. See First Am. Bank of N.Y. v. Southwest Gloves & Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986) (stating that section 1121(d)(1) provided bankruptcy court with flexibility to increase the period of exclusivity in its discretion); see also In re Burns and Roe Enters., Inc., No 00-41610 (RG), 2005 WL 6289213, at *3-4 (D.N.J. Nov. 2, 2005); In re Sharon Steel Corp., 78 B.R. 762, 763-65 (Bankr. W.D. Pa. 1987).

18. Legislative history also makes clear that the term “cause” is intended to be a flexible standard aimed at balancing the competing interests of a debtor and its creditors. See H.R. Rep. No. 95-595 at 231-32 (1978). The purpose of exclusivity is to “promote an environment in which the debtor’s business may be rehabilitated and a consensual plan may be negotiated.” See H.R. Rep. No. 95-595, at 36 (1994); Burns and Roe, 2005 WL 6289213, at *4. Accordingly, to fulfill Congress’ legislative intent, debtors should be granted a reasonable opportunity to remain in control for a period of time to prepare adequate financial and non-financial information regarding the outcome of any proposed plan for disclosure to creditors. See In re Mclean Indus., Inc., 87 B.R. 830, 833-34 (Bankr. S.D.N.Y. 1987); see also In re All Seasons Indus., Inc., 121 B.R. 1002, 1006 (Bankr. N.D. Inc. 1990) (“One of the most important reasons for extending the debtor’s period of exclusivity is to give the chapter 11 process of

negotiation and compromise an opportunity to be fulfilled, so that a consensual plan can be proposed and confirmed without opposition.”).

19. To determine whether cause exists to extend the Exclusive Periods, courts consider several non-exclusive factors, including: (i) the size and complexity of a case; (ii) the debtor’s need for sufficient time to negotiate a plan and prepare adequate information; (iii) the existence of good faith progress toward reorganization; (iv) whether the debtor is paying its bills as they come due; (v) whether the debtor has shown a reasonable likelihood of proposing a viable plan; (vi) the progress the debtor has made in negotiating with its creditors; (vii) the amount of time that has elapsed in the case; (viii) whether the debtor is seeking an extension of the exclusive periods to pressure creditors to submit to the debtors’ reorganization demands; and (ix) whether any unresolved contingencies exist. See, e.g., In re Adelphia Comm. Corp., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); 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). No single factor is dispositive in determining whether to extend exclusivity; rather, courts can choose to rely on only a few factors or even altogether differing factors. See In re Elder-Beerman Stores Corp., No. C-3-97-175, 1997 WL 1774880, at *4 (S.D. Ohio June 23, 1997); Dow Corning, 208 B.R. at 669-70 (noting that sometimes certain factors are more important or relevant than others).

20. As set forth below, an application of the relevant foregoing factors to the present case demonstrates that ample cause exists to grant the Debtors’ requested extensions of the Exclusive Periods.

II. Cause Exists to Extend the Exclusive Periods

A. The Debtors Have Made Good Faith Progress Towards a Plan

21. Since the Petition Date, the Debtors have made significant progress in these Chapter 11 Cases. Indeed, although these Chapter 11 Cases have been pending for just over four months, the Debtors have, *inter alia*: (i) rejected leases and conducted going out of business sales for numerous underperforming store locations; (ii) conducted a sale process in connection with the Going Concern Sale and obtained Court approval of the Sale; (iii) sold the remaining GOB Inventory to the Buyer; (iv) moved to reject the leases for the GOB Leased Locations; (v) obtained interim and final approval of the Debtors' debtor in possession credit facility; and (vi) prepared and filed Schedules of Assets and Liabilities and Statements of Financial Affairs.

22. The Debtors intend to maintain the speed and efficiency of these Chapter 11 Cases as they work to close the Sale, liquidate the Debtors' remaining assets and formulate a chapter 11 liquidating plan; however, the Debtors are mindful of the time required to close the Sale, monetize certain remaining assets, complete the transition of their books and records and conduct an analysis of claims filed. The Debtors also require sufficient time to consider plan structure or wind down alternatives, as well as their financial implications, so that the resulting plan serves the best interests of the Debtors and their creditors. The Debtors thus seek a short extension of the Exclusive Periods so that the Debtors, in consultation with their key constituents, can work to develop a viable chapter 11 plan or alternate wind down option.

B. The Debtors are Paying their Postpetition Obligations as They Become Due

23. Next, the fact that the Debtors continue to pay their postpetition obligations as such obligations become due supports an extension of the Debtors' Exclusive Periods. The Debtors are projected to have sufficient resources to meet their required post-petition payment

obligations and manage their businesses effectively through the effective date of any plan or wind down alternative.

C. The Debtors Have Demonstrated Reasonable Prospects for Filing a Viable Plan

24. Furthermore, the Debtors' prospects for filing and ultimately confirming a viable chapter 11 plan are favorable. The Debtors intend to work with the Committee on the terms of a plan of liquidation and anticipate filing a plan, or formulating such other exit strategy, that is supported by the Committee. The Debtors also submit that any proposed plan will be structured so as to ensure a maximum recovery to the Debtors' creditors and parties in interest and an orderly wind-down of the Debtors' remaining operations. Thus, because the Debtors have reasonable prospects for filing a viable plan, an extension of the Exclusive Periods is warranted.

D. The Chapter 11 Cases Have Been Pending for a Short Period of Time

25. The fact that the Chapter 11 Cases have been pending for less than five months, during which time the Debtors have made significant progress, including the approval of a sale that provides significant value to the Debtors' estates, further supports the requested extension of the Exclusive Periods. While the Debtors hope to negotiate and file a consensual chapter 11 plan in the near future, the Debtors need additional time to consummate the Sale and address various post-closing and asset disposition issues to develop a plan that best serves the Debtors and their estates, creditors and parties in interest. Having sufficient time to develop and negotiate such a plan will ensure a smooth plan process, which will in turn enable these cases to continue to progress in an efficient manner.

E. No Prejudice to Creditors

26. The requested extension of the Exclusive Periods will not harm the Debtors' creditors or other parties in interest. On the contrary, the Debtors have conducted these Chapter

11 Cases in a manner intended to maximize the recoveries of their creditors. In addition, the Debtors are not seeking this extension to prejudice their creditors or to otherwise pressure creditors to submit to reorganization demands. Instead, the Debtors seek the requested extension so that they can maintain the status quo in these Chapter 11 Cases while the Debtors liquidate their remaining operations. Thus, because neither the Debtors' creditors nor any other party in interest will be prejudiced by the proposed extension of the Exclusive Periods, the Debtors submit that the relief requested should be approved.

27. Lastly, although the Debtors hope to be in a position to file a consensual chapter 11 plan within the extended Exclusive Filing Period, as a precautionary measure, the Debtors reserve the right to request further extensions of the Exclusive Periods for cause.

No Prior Request

28. No previous request for the relief sought herein has been made to this or any other Court.

Notice

29. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq.); (b) the Debtors' 30 largest creditors, on a consolidated basis; (c) counsel to Wells Fargo Bank, National Association, Debtors' prepetition secured lender, (x) Riemer Braunstein LLP, Three Center Plaza, Suite 600, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) and Times Square Tower, Seven Times Square, Suite 2506, New York, NY 10036 (Attn: Steven E. Fox, Esq.) and (y) Ashby & Geddes, P.A. 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899 (Attn: Gregory Taylor, Esq.); (d) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive,

Roseland, NJ 07068 (Attn: Mary E. Seymour, Esq. and Bruce Buechler, Esq.) and Whiteford, Taylor & Preston, LLC, The Renaissance Centre, 405 North King Street, Suite 500, Wilmington, DE 19801 (Attn: Christopher M. Samis, Esq.); and (e) any party who has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form annexed hereto at **Exhibit A**: (i) extending the Debtors' Exclusive Filing Period by 90 days, through and including April 9, 2018; (ii) extending the Debtors' Exclusive Solicitation Period by 90 days, through and including June 8, 2018; and (iii) granting the Debtors such other and further relief as is just and proper.

Dated: January 5, 2018
Wilmington, Delaware

SAUL EWING ARNSTEIN & LEHR LLP



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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
Vitamin World, Inc., <i>et al.</i> , ¹	)	Case No. 17-11933 (KJC)
)	
Debtors.	)	Jointly Administered
)	
	)	Objection Deadline: January 18, 2018 at 4:00 p.m. (EST)
	)	Hearing Date: February 21, 2018 at 2:30 p.m. (EST)
)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that on January 5, 2018, the above-captioned debtors and debtors in possession (the “Debtors”) filed the **Motion of the Debtors for Entry of an Order Extending the Debtors’ Exclusive Periods to File a Chapter 11 Plan and Solicit Votes Thereon** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the entry of an order approving the Motion must be (a) in writing and served on or before **January 18, 2018 at 4:00 p.m.** (prevailing Eastern Standard Time) (the “Objection Deadline”); (b) filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served as to be received on or before the Objection Deadline by the undersigned attorneys for the Debtors.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **FEBRUARY 21, 2018 AT 2:30 P.M. (PREVAILING EASTERN TIME)** BEFORE THE HONORABLE KEVIN J. CAREY, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5th FLOOR, COURTROOM 5, WILMINGTON, DELAWARE 19801.

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.

¹ Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Vitamin World, Inc. (2283); VWRE Holdings, Inc. (8915); VW Interholdings, Inc. (4744); VW Online, Inc. (8763); Precision Engineered Limited (USA) (0916); Vitamin World (V.I.), Inc. (9839); Vitamin Depot, LLC (6747); Vitamin World of Guam, LLC (2056); and Nutrition Warehouse, Inc. (5095). Debtors’ mailing address is 4320 Veterans Highway, Holbrook, NY 11741.

Dated: January 5, 2018
Wilmington, Delaware

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EXHIBIT “A”

Proposed Order

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

In re:	)	Chapter 11
Vitamin World, Inc., <i>et al.</i> , ¹	)	Case No. 17-11933 (KJC)
Debtors.	)	Jointly Administered
	)	Related to Docket No. ____

**ORDER PURSUANT TO 11 U.S.C. § 1121 EXTENDING
THE DEBTORS' EXCLUSIVE PERIODS TO FILE
A CHAPTER 11 PLAN AND SOLICIT VOTES THEREON**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") for entry of an order, pursuant to section 1121(d) of the Bankruptcy Code (a) further extending the Debtors' Exclusive Filing Period by 90 days, through and including April 9, 2018, and (b) further extending the Debtors' Exclusive Solicitation Period by 90 days, through and including June 8, 2018; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a "core" proceeding under 28 U.S.C. § 157(b); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court being satisfied that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon review of the Motion and all the

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² Any and all terms not defined herein shall have the meaning ascribed to them in the Motion.

proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Pursuant to section 1121(d) of the Bankruptcy Code, the period in which the Debtors have the exclusive right to file a chapter 11 plan is extended through and including April 9, 2018.

2. Pursuant to section 1121(d) of the Bankruptcy Code, the period in which the Debtors have the exclusive right to solicit acceptances of the chapter 11 plan is extended through and including June 8, 2018.

3. The entry of this Order is without prejudice to the Debtors' right to seek a further extension of the Exclusive Periods under section 1121 of the Bankruptcy Code.

4. This Court shall retain jurisdiction to hear and determine all matters arising from, or related to, the interpretation or implementation of this Order.

Dated: _____, 2018

Honorable Kevin J. Carey
United States Bankruptcy Judge