

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS AT KANSAS CITY**

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| In re   | : Chapter 11                  |
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| JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i> , | : Case No. 16-21142 (RDB)     |
|   | : <i>Jointly administered</i> |
| Debtors,  | :                             |
|   | x Related to Doc. No. 845     |

**JD HOLDINGS' OBJECTION TO DEBTORS' MOTION TO EXTEND EXCLUSIVE  
PERIODS TO FILE AND SOLICIT ACCEPTANCE OF A PLAN PURSUANT TO  
11 U.S.C. § 1121(d)**

Debtors have asked this Court to extend their exclusive periods to file and solicit a plan for another year, to December 26, 2017, and February 26, 2018, respectively.<sup>1</sup> In so requesting, Debtors have not indicated what they have done or need to do in order to file and solicit a plan other than alleging that: (i) Debtors have begun to market their assets; (ii) Debtors need time to review claims; and (iii) this bankruptcy is complex and time-consuming. As set forth below, Debtors' conclusory statements, none of which are supported by any evidence, do not satisfy their burden of demonstrating cause for why the Court should grant such a lengthy extension.

*First*, Debtors allege that they have begun to market their assets but Debtors have not provided the Court with any information regarding their marketing efforts, such as how those efforts will proceed and for how long, whether they have had contact with any potential bidders, and when they expect to receive any bids. Nor have Debtors provided any information concerning their financial advisor's progress or how Debtors or their financial advisor intend to address inevitable deal points and contingencies such as increases in franchise fees, extensive

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<sup>1</sup> JD Holdings submits this objection without prejudice to its position that these bankruptcy cases should be dismissed.

property improvement plans (“PIPs”), and approvals that are required by franchisors. JD Holdings has completed its diligence of the hotel portfolio in connection with the Delaware litigation and is willing and able to purchase these assets and close promptly. JD Holdings has contacted Debtors’ financial advisor in an attempt to move a sale forward but, to date, Debtors’ financial advisor has failed to engage with JD Holdings.

*Second*, as to Debtors’ claim that they need time to review the more than 600 claims filed in these cases, the biggest of these, by far, are (i) JD Holdings’ eighty-five identical claims for \$587.6 million filed against each of the Debtors for the Debtors’ prepetition breaches of the ROFR Agreement, filed with the claims agent on December 23, 2016, and (ii) JD Holdings’ seventy-seven identical claims for \$565.3 million filed against each of the Debtors for rejection damages, filed on January 10, 2017.<sup>2</sup> Despite being aware of these claims since December 23, 2016 and January 10, 2017 respectively, the JQH Trustees recently testified that they had not reviewed them. The only other material claims are those of SFI Belmont LLC and the CMBS Lenders, and Debtors have been aware of those claims since these cases began. The majority of the remaining non-duplicative claims are for less than \$10,000. Debtors provide no explanation as to why they need a year to review these claims. To the extent that Debtors believe resolution of JD Holdings’ claims is critical to any plan, the Court should lift the automatic stay and allow the parties to litigate the Delaware law issues implicated in JD Holdings’ claim before the Delaware court. (Debtors’ recent joint motion with SFI Belmont for authority to transfer certain checks to SFI Belmont makes clear that these issues will need to be resolved, as Debtors unequivocally expressed their “intent to seek and recover” amounts that are at issue as third-

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<sup>2</sup> In its claims, JD Holdings expressly preserved its position that these bankruptcy cases should be dismissed.

party claims before the Delaware Court.) Some or all of those issues cannot be litigated before this Court.<sup>3</sup>

*Third*, Debtors allege that this bankruptcy is complex, time-consuming, and that they need time to resolve certain contingencies before they can propose a plan but Debtors do not explain what those issues are or why they cannot attend to these issues while formulating and soliciting a plan. Debtors also state that resolution of JD Holdings' motion to dismiss these cases is "an important precursor to any plan"—a position at odds with Debtors' insistence that this Court resolve their motion to reject the ROFR Agreement before resolving JD Holdings' motion to dismiss.<sup>4</sup> Yet Debtors have now further delayed resolution of the motion to dismiss by filing five separate motions for summary judgment, accompanied by 97 pages of briefing and 63 exhibits consisting of hundreds of pages. Those motions could have been filed months ago. Debtors do not rely on any of the discovery that they have taken for four of their motions, and for the fifth, they cite to discovery responses from JD Holdings that JD Holdings provided in September 2016. Rather than delay resolution of the motion to dismiss further with summary judgment motion practice, the Court instead should set an expeditious hearing on JD Holdings' motion to dismiss these cases.

The current exclusivity period runs through April 24, 2017. Since the Debtors commenced bankruptcy almost eight months ago, it does not seem as if they have accomplished anything. During that time, interest rates have risen sharply; industry revenue-per-available-

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<sup>3</sup> The relevant claims that Debtors have said they will pursue arise from a partnership agreement between Atrium GP, LLC, the estate of John Q. Hammons, the JQH Trust, and Hammons, Inc., and are subject to the exclusive forum selection clause in favor of courts in Delaware. *See In re D.E. Frey Group, Inc.*, 387 B.R. 799, 806 (D. Colo. 2008) ("Thus—like an arbitration clause—the Bankruptcy Court here must enforce the forum selection clause unless the forum would be excluded as inherently unfair under [the Supreme Court's decision in] *Bremen*.").

<sup>4</sup> As the Court is aware, it was Debtors who insisted upon an extended discovery period for the motions to dismiss and opposed JD Holdings' request for an expedited resolution on this issue.

room guidance has been reduced since the June 2016 appraisals; and PIPs and other capital requirements only increase in scope and cost over time as hotels age. JD Holdings respectfully submits that the Court should (i) deny Debtors' application to extend the exclusivity period without prejudice, and (ii) set a hearing on JD Holdings' motions to dismiss. At that point, the Court can resolve any factual issues presented by the motions along with legal ones in order to give a final adjudication of the motions to dismiss.<sup>5</sup> In any event, Debtors have not demonstrated that they need additional time to file and solicit a plan, let alone an entire year.

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<sup>5</sup> Although JD Holdings is pursuing an appeal of this Court's December 13, 2016 order rejecting the ROFR Agreement, Debtors offer no justification why the pendency of this appeal (or JD Holdings' motion to dismiss) requires Debtors to have the *exclusive* ability to propose and solicit a plan.