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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re: Jagged Peak, Inc., a Nevada corporation, ☒ Affects this Debtor.	Case No.: BK-S-19-15959-MKN Chapter 11 **LEAD CASE** **Jointly Administered with:**
In re: TradeGlobal, LLC, a Delaware limited liability company, ☒ Affects this Debtor.	Case No.: BK-S-19-15960-MKN Chapter 11
In re: TradeGlobal North America Holding, Inc., a Delaware corporation, ☒ Affects this Debtor.	Case No.: BK-S-19-15961-MKN Chapter 11 Hearing Date: May 6, 2020 Hearing Time: 9:30 a.m.

DEBTORS' SECOND MOTION FOR ENTRY OF ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE AND SECURE ACCEPTANCE OF DEBTORS' PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d)[1]

Jagged Peak, Inc. ("Jagged Peak"), Trade Global North America Holding, Inc. ("TGNA")

[1] The relief requested by the Debtors (defined supra) in this Motion (defined supra) excludes the Official Committee of Unsecured Creditors (the "Committee") for which the exclusivity period will expire on April 1, 2020.

and Trade Global LLC ("TradeGlobal" or, collectively with Jagged Peak and TradeGlobal North America, the "Debtors"), debtors and debtors-in-possession, hereby respectfully submit this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit 1**, extending the 120-day exclusive period for filing a plan of reorganization, which currently expires on April 1, 2020, for an additional ten (10) days up to and including April 10, 2020, and the 180-day period for securing acceptance of the plan to the fourteenth business day after the plan confirmation hearing is concluded.

1. The primary reason for the requested extension is to permit the Debtors and the Committee to continue and conclude their negotiations with Nespresso USA, Inc. ("Nespresso") and Singapore Post Limited ("SingPost") for a global resolution of their claims which will hopefully culminate in, and be effectuated by, a consensual plan to the benefit of the Debtors' estates and stakeholders. Nespresso and SingPost are the two largest creditors in these chapter 11 cases. It is expected that if the Debtors and Committee are successful in negotiating a settlement with Nespresso and SingPost, it will enable the timely confirmation of a plan, and will minimize or eliminate any costly confirmation litigation that may otherwise ensue. The Debtors' request for this brief extension of the exclusive periods has been discussed and agreed to by SingPost, and the Committee. Nespresso has advised the Debtors that it does not object to the extension.

2. This Motion is made and based upon the following Memorandum of Points and Authorities, the declaration of Jeremy Rosenthal (the "Rosenthal Declaration") filed concurrently herewith, the papers and pleadings on file in the Chapter 11 Cases (defined below), judicial notice of which is respectfully requested pursuant to Federal Rule of Evidence 201, and the argument of counsel entertained by the Court at the time of any hearing of the Motion.

3. This is Debtors' second request to extend the exclusive periods to file and secure acceptance of a plan of reorganization pursuant to 11 U.S.C. § 1121(d). In connection with the Debtors' first request for such extensions, the Debtors and Committee entered into a *Stipulation to Extend the Exclusive Period to File and Secure Acceptance of Debtors' Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) Through April 1, 2020 as to the Official Committee of Unsecured Creditors* (Docket No. 489) (the "UCC Stipulation"). Pursuant to the UCC Stipulation, the

Debtors agreed that their exclusive period to file a plan would terminate, as to the Committee only, on April 1, 2020 and that the Debtors would not seek any further extensions of the exclusive periods as to the Committee only. To be clear, the Debtors do not now seek to amend, alter, or otherwise modify the UCC Stipulation in any respect. Rather, the Debtors seek to extend their exclusive periods as to parties other than the Committee.

MEMORANDUM OF POINTS AND AUTHORITIES

I.
JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Local Rule[2] 1001(b)(1). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue of the Debtors' Chapter 11 Cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Debtors remain in possession of their property and continue in the operation and management of their businesses as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

6. Pursuant to Local Rule 9014.2, Debtors consent to entry of final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment consistent with Article III of the United States Constitution.

7. The statutory basis for the relief sought herein arises from Section 1121.

II.
BACKGROUND

A. The Debtors' Businesses and Operations.

8. The Debtors were in the business of supporting clients' e-commerce operations by

[2] Unless otherwise stated, all references to "Sections" herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S. Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a "Local Rule" shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

harnessing technology and had nearly 800 dedicated and hard-working rank-and-file employees to process, fulfill and ship consumer and medical goods across the United States.

9. Jagged Peak was a logistic company with multi-national clients serviced by its proprietary software product, EDGE™ (Enterprise Dynamic Global Engine), which enabled companies to control and coordinate multi-channel orders, catalogs, multi-warehouse inventories, and delivery across multiple customers, suppliers, employees, locations, and partners. The EDGE™ platform was a critical competitive advantage for Jagged Peak.

10. In addition to the EDGE™ platform, Jagged Peak managed warehouses where it stored, packed and shipped over $900 million in goods for clients every year. Jagged Peak managed all facets of a customer's e-commerce operations from order processing, selecting items, packing boxes and shipping orders for final delivery by third-party shipping companies.

11. TradeGlobal also provided a sophisticated software as a service (SaS) platform called Cross-Border. Cross-Border enabled TradeGlobal's customers to sell and ship products from the United States into international markets by managing shipping costs, tariffs and duties, and supporting the customer in complying with foreign laws and regulations.

12. TradeGlobal and Jagged Peak worked closely with one another in conducting their business operations. TradeGlobal and Jagged Peak shared certain relationships with key suppliers and Jagged Peak contracts with TradeGlobal for it to pack and ship goods in the Midwest region of the United States for Jagged Peak's largest customer. TradeGlobal utilized Jagged Peak's sophisticated EDGE™ software platform to fulfill orders for Jagged Peak efficiently and cost effectively.

B. Commencement and Administration of the Chapter 11 Cases.

13. On September 16, 2019 (the "Petition Date"), Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned jointly administered cases (the "Chapter 11 Cases"). See ECF No. 1.

14. On September 17, 2019, Debtors filed several first day motions, including motions for joint administration and to pay all prepetition employee wages and withholdings, a utilities and bank accounts motion, a motion to extend the time to file schedules and statements, and a motion

to employ a claims and noticing agent (together, the "First Day Motions"). See ECF Nos. 7-12.

15. The First Day Motions were approved by this Court at hearings on September 19 and October 31, 2019. See ECF Nos. 47-50, 61-62, and 256-258.

16. On October 28 and 29, 2019, the Debtors timely filed their schedules and statements. See ECF Nos. 185-187, and 190.

17. The Debtors' 341 meetings were held and concluded on November 7, 2019. See ECF Nos. 4, 170, and 231.

18. The general bar dates for filing claims against the Debtors is January 15, 2020, and the governmental bar date is March 16, 2020 (together, the "Bar Dates"). See ECF No. 2.

C. The Sales of the Debtors' Businesses.

19. On October 22, 2019, the Debtors filed a motion (the "Sale Motion"), seeking 1) entry of an order approving bidding procedures for one or more sales (the "Sales" and each, a "Sale") of the Debtors' Assets (as such term is defined in the Sale Motion), scheduling an auction and final sale hearing and approving the form and manner of notice thereof, approving procedures relating to the assumption and assignment of executory contracts and unexpired leases, including the form and manner of notices, and granting related relief, and 2) entry of an order approving one or more Sales of the Debtors' Assets free and clear of all Liens, Claims (as such terms are defined in the Sale Motion), interests, and encumbrances under Section 363(b) and (f) of the Bankruptcy Code; and (ii) the assumption and assignment of certain executory contracts and unexpired leases under Section 365 of the Bankruptcy Code. See ECF Nos. 131-132.[3]

20. The bidding procedures were approved by the Court in an order dated October 29, 2019 (the "Bidding Procedures Order"). See ECF No. 198. An Auction was conducted on November 18, 2019 for the TradeGlobal Assets, and TradeGlobal selected VSCM as the Winning Bidder. See ECF No. 312.

[3] Also on October 22, 2019, the Debtors commenced an action against Singapore Post Limited by filing an adversary complaint and moved for a temporary restraining order. See ECF Nos. 1-4 in Adv. No. 19-01107-mkn (the "Adversary"). The Debtors agreed to voluntarily dismiss the Adversary without prejudice on October 25, 2019 pursuant to a stand-still agreement with Singapore Post Limited. See ECF No. 8 Adv. No. 19-01107-mkn.

21. The hearing to consider the Jagged Peak and TradeGlobal Sales was held on November 20, 2019. On November 27, 2019, the Bankruptcy Court entered an order, which was thereafter amended on December 2, 2019 (as amended, the "Jagged Peak Sale Order"), approving a sale by Jagged Peak of substantially all of its assets (the "Purchased Assets") and the assumption and assignment of certain executory contracts and unexpired leases to ID Logistics US, Inc. ("ID Logistics") on the terms set forth in the *Asset Purchase Agreement* by and between Jagged Peak and ID Logistics dated November 11, 2019 (the "Jagged Peak APA"). See ECF Nos. 343-345.

22. On December 2, 2019, the Bankruptcy Court entered an order (the "TradeGlobal Sale Order"), approving a sale by TradeGlobal of substantially all of its assets and the assumption and assignment of certain executory contracts and unexpired leases to Visible Supply Chain Management, LLC ("VSCM") on the terms set forth in the *Asset Purchase Agreement* by and between TradeGlobal and VSCM dated November 18, 2019 (the "TradeGlobal APA," and together with the Jagged Peak APA, the "Purchase Agreements"). See ECF No. 346.

23. The Sales to ID Logistics and VSCM closed on December 11, 2019 (the "Closings"), and the Debtors filed notice of the Closings on December 12, 2019. See ECF No. 380.

24. Since the Closings, the Debtors have focused their attention on negotiating and drafting a joint plan of reorganization with the Committee, negotiating the potential resolution of estates' causes of action and claims various parties have asserted against the estates, evaluating the assumption or rejection of the remaining executory contracts and unexpired leases, and evaluating claims filed against the estates.

D. Prior Motion Regarding Exclusivity.

25. On January 14, 2020, the Debtors filed a *Motion for Entry of Order Extending the Exclusive Periods to File and Secure Acceptance of Debtors' Plan of Reorganization Pursuant to 11 U.S.C. § 1112(d)* (Docket No. 439) (the "First Extension Motion"). The First Extension Motion sought an extension of the Debtors' exclusive period to file a plan from January 14, 2020 to May 14, 2020 and an extension of the Debtors' exclusive period to solicit acceptances of a plan to the fourteenth business day after the confirmation hearing is concluded.

26. Nespresso filed an objection to the First Extension Motion (Docket No. 478) (the "Nespresso Objection"). The Debtors filed a reply on February 12, 2020 (Docket No. 493).

27. On February 10, 2020, the Committee and the Debtors entered into the UCC Stipulation.

28. At or prior the hearing on February 19, 2020, to consider the First Extension Motion, the Debtors and Nespresso resolved the Nespresso Objection such that the Debtors' exclusive period to file a plan would expire on April 1, 2020, subject to the Debtors' ability to seek further extensions with the Court.

III.
LEGAL ARGUMENT

29. Section 1121(c)(3) provides, in relevant part, that

> [a]ny party in interest . . . may file a plan *if and only if* -- (3) the Debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interest that is impaired under the plan.

11 U.S.C. § 1121(c)(3) (emphasis added).

30. The following provision, Section 1121(d), authorizes the court to extend the 120-day and 180-day time periods set forth in Section 1121(c)(3) as follows:

> (d) On 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 reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. 1121(d). However, such an extension may not exceed twenty months after the order for relief. See 11 U.S.C. § 1121(d)(2)(B).

31. The decision to extend a debtor's exclusive filing period is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. See, e.g., First American Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986); In re Adelphia Communications Corp., 352 B.R. 578, 586-87 (Bankr. S.D.N.Y. 2006) (collecting cases); H.R. Rep. No. 95-595, 95th Cong., 1st Session 231-32 (1978) ("The Court is given the power, though, to increase or reduce the [exclusivity period] depending

on the circumstances of the case.").

32. Although the Bankruptcy Code does not define what constitutes "cause" under Section 1121(d), "according to the legislative history, [cause may] be established by 'a showing of some promise of success.'" In re Crescent Manuf. Co., 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990) (internal citations omitted). In interpreting Section 1121(d), courts have developed a number of factors that they consider in determining whether the requested extension is warranted, which factors include: (1) the size and complexity of the case; (2) the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) the debtor's payment of bills as they become due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiations with its creditors; (7) the amount of time which has elapsed in the bankruptcy case; (8) whether the debtor is seeking an extension of exclusivity to pressure creditors to submit to the debtor's reorganization demands; and (9) whether unresolved contingency exists. See In re Adelphia Communications Corp., 352 B.R. at 587. Not all of these factors are relevant in every case; rather, it is within the discretion of the bankruptcy court to determine which factors are relevant to the case and hand and to give appropriate weight to each factor. See In re Hoffinger Indus., Inc., 292 B.R. 639, 644 (8th Cir. BAP 2003).

33. Taking all of these factors as a whole and examining them in light of what is best for these Chapter 11 Cases and the Debtors' estates,[4] the Debtors submit that there is ample cause to grant the relatively brief ten (10) day extension of the exclusive periods requested here. The Debtors are not seeking a significant extension of the exclusive periods, but a modest extension of ten (10) days (87 days from the original expiration of the exclusive plan filing deadline of January 14, 2020), well within the twenty-month limitation set forth in Section 1121(d)(2)(B). This extension is requested in good faith and is in the best interest of the Debtors and their creditors as

[4] In re Adelphia Communications Corp., 352 B.R. at 582 ("[I] consider this exclusivity termination motion not just by checking off, or any mechanical counting or even weighing, of the enumerated factors, but also by taking a broader, more global view-focused on what is best for these chapter 11 cases; most in keeping with the letter and spirit of chapter 11….").

it will permit the Debtors and the Committee to continue their negotiations with SingPost and Nespresso regarding a potential global resolution of the claims they have asserted against the Debtors and the parameters of a consensual plan.

34. With respect to the first factor, while the Debtors' Chapter 11 Cases are not extraordinarily large, they are complex because, among other things, the Debtors' estates included two separate but interrelated operating businesses with a number of shared suppliers and intercompany agreements, and complicated dynamics between the Debtors and their ultimate equity holder, SingPost. The first factor thus weighs in favor of the requested extension of exclusivity.

35. This dovetails into the second factor – the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information. Here, the first months of the Chapter 11 Cases were devoted to a fast-paced sale process that required the sustained attention of the estates' professionals. The Debtors have tailored their brief request to correspond with the anticipated timeline necessary to finalize their discussions with Nespresso, SingPost and the Committee. Those discussions are in their final stages and it is the Debtors' hope and expectation that they will result in a global settlement culminating in and effectuated by a consensual plan.

36. With respect to the third, fifth, and sixth factors, the Debtors are seeking this extension not to delay administration of the Chapter 11 Cases or to pressure creditors, but to continue meeting the challenges presented by the Chapter 11 Cases in furtherance of a fair and equitable reorganization plan. See In re Sw. Oil Co. of Jourdanton, Inc., 84 B.R. 448, 453 (Bankr. W.D. Tex. 1987) (writing that courts should also determine or attempt to determine the debtor's motives in requesting an extension under Section 1131(d)). Since the Petition Date, the Debtors have worked diligently with their creditor constituencies to advance the Chapter 11 Cases, ensure the Debtors' continued operations through the sale process, and negotiate sale transactions which would maximize distributions to creditors. The Debtors are confident that this consensual approach will result in firm support of their plan from a significant portion of their creditors.

37. With respect to the fourth factor, the Debtors have continuously paid their post-

petition obligations as they have come due in the ordinary course of business in accordance with the Bankruptcy Code.

38. As to the seventh factor, this Motion is the second request to extend the exclusive periods for a very brief ten (10) day period to allow the Debtors to, amongst other things, continue negotiating (in conjunction with the Committee) a global resolution with SingPost and Nespresso regarding the claims they have asserted against the Debtors' estates, thereby weighing in favor of granting the Motion. As noted by the court in Texaco, in particularly complex cases, it is not unusual for two or three years to pass before a debtor is in a position to file a plan. See In re Texaco, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) (quoting In re United Press Int'l, Inc., 60 B.R. 265, 270 (Bankr. D.C. 1986)); See also In re Heilig-Meyers Co., Case No. 00-34533 (Bankr. E.D.Va. Dec. 11, 2000 through Feb. 10, 2005) (orders extending the exclusive periods on twelve separate occasions).

39. As to the eighth factor, this extension is not requested to pressure the Debtors' creditors. In fact, the additional ten (10) day extension that the Debtors are seeking would not apply to the Committee. The Debtors and Committee are working diligently on filing a joint plan of reorganization. The Debtors are seeking an extension of exclusivity as to all other parties in interest to facilitate the conclusion of the ongoing negotiations and to allow the estates to resolve significant claims held against the estates and significant causes of action asserted by the estates.

40. The requested extension is therefore neither detrimental to nor prejudicial to the Debtors' creditors. As mentioned above, the requested extension would not apply to the Committee as the Debtors are working with the Committee to file a joint plan of reorganization. The limited requested extension is intended to alleviate the potentially needless incurrence of fees and costs which would be harmful to the estates and the Debtors' ability to reorganize. See In re Adelphia Communications Corp., 352 B.R. at 590 (noting that "a competing plans battle" several weeks before confirmation of the pending plan might harm existing settlements, result in the incurrence of avoidable costs by the estates, would generally be at odds with moving the cases forward, and could be disastrous to the Debtor ability to reorganize).

IV.

CONCLUSION

Taken as a whole, these factors support approval of the Motion, and the Debtors respectfully submit that they should be entitled to complete the plan process in a cost-effective and timely manner without the risk of uncertainty and potential delay associated with a lapse of the exclusivity period. Accordingly, Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit 1,** extending the exclusive period to file a plan (except as to the Committee for which the Debtors' exclusive period to file a plan will expire on April 1, 2020) up to and including April 10, 2020, and the 180-day period for securing acceptance of the plan to the fourteenth business day after the plan confirmation hearing is concluded.

DATED this 31st day of March, 2020.

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