

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

In re:

SGR WINDDOWN, INC., et al.,¹

Debtors.

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

Hearing Date: December 19, 2019 at 11:30 a.m. (ET)

Obj. Deadline: December 16, 2019 at 4:00 p.m. (ET)

**MOTION OF SGR WINDDOWN, INC. ET AL.
FOR ORDER EXTENDING THE PERIOD TO
REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9027**

The above-captioned Debtors (“Debtors”), move the Court (this “Motion”), for entry of an order, substantially in the form attached hereto as **Exhibit A**, extending the period within which the Debtors may remove actions pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors consent 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. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or Canadian Revenue Agency, as applicable are (1) SGR Winddown, Inc., a Delaware corporation (4356), (2) SGR Winddown International, LLC, a Delaware limited liability company (1254), and (3) SGR Canada Winddown Legacy, Ltd. (4480). The location of the Debtors’ corporate headquarters is 1700 E. Walnut Ave, 5th Floor, El Segundo, California 90245

2. The statutory predicates for the relief requested herein are 28 U.S.C. § 1452 (“Section 1452”) and Rules 9027 and 9006 of the Bankruptcy Rules.

BACKGROUND

3. On September 6, 2019 (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

4. On September 17, 2019, the United States Trustee for Region 3 appointed an Official Committee of Unsecured Creditors (Docket No. 97) (the “Committee”). No trustee or examiner was appointed in these Chapter 11 Cases.

THE ACTIONS

5. On October 11, 2019, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”). As part of the Schedules, the Debtors identified the civil Actions (as defined below) of which the Debtors were then aware. The Debtors are continuing to analyze the existence of any Actions, as well as any filed proofs of claim, to determine whether to remove any Actions. Thus, the Debtors file this Motion out of an abundance of caution to set the Pre-Petition Removal Deadline and Post-Petition Removal Deadline.

RELIEF REQUESTED

6. By this Motion, the Debtors requests the entry of an order, pursuant to Rule 9006(b) of the Bankruptcy Rules, extending the time by which to file notices of removal with respect to any civil actions pending as of the Petition Date for an additional ninety (90) days, from the current December 5, 2019 deadline (the “Current Deadline”)² through and including March 4, 2020 (the “Pre-Petition Removal Deadline”). Furthermore, the Debtors request the entry of an order

² Pursuant to Del. Bankr. LR 9006-2, the filing of this Motion prior to the Current Deadline shall serve to automatically extend the Current Deadline without the necessity for the entry of a bridge order, until the Court rules on this Motion. *See* Del. Bankr. LR 9006-2.

extending the time by which to file notices of removal with respect to civil actions initiated after the Petition Date to the later of (i) March 4, 2020, and (ii) the time period specified in Bankruptcy Rule 9027(a)(3)(A) and (B) (*i.e.*, the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons) (the “Post-Petition Removal Deadline”).

7. The Debtors request that the Pre-Petition Removal Deadline apply to all matters specified in Rule 9027(a)(2)(A), (B), and (C) and that the Post-Petition Removal Deadline apply to all matters specified in Rule 9027(a)(3) (collectively, the “Actions”). This Motion is without prejudice to the rights of the Debtors to seek further extensions of either or both of the Pre-Petition Removal Deadline and the Post-Petition Removal Deadline.

BASIS FOR RELIEF

8. Section 1452 and Rule 9027 of the Bankruptcy Rules govern the removal of pending civil actions. Specifically, Section 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a). Bankruptcy Rule 9027(a)(2) further provides, in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2). Bankruptcy Rule 9027(a)(3) provides, in pertinent part:

If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

Fed. R. Bankr. P. 9027(a)(3).

9. Bankruptcy Rule 9006(b) provides that the court may extend unexpired time periods, such as the removal period, without notice:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(b)(1).

10. The Debtors believe that it is prudent to seek an extension of the time period to file notices of removal in order to protect the Debtors' right to remove the Actions. From the Petition Date until now, the Debtors focused their efforts on: (a) obtaining interim and final approval of first day motions and related motions to ensure a smooth runway into chapter 11; (b) preparing and filing their schedules of assets and liabilities and statements of financial affairs; (c) working with the Committee and negotiating with other creditors and parties in interest on various issues in the cases; (d) establishing a bar date for filing of proofs of claim; (e) negating and consummating a sale of substantially all of the Debtors' assets; (f) rejecting various executory contracts and unexpired leases that are no longer necessary for the Debtors' business; and (g) dealing with other emergent issues.

11. The extension of time for removing Actions sought in this Motion will afford the Debtors the opportunity necessary to make fully-informed decisions concerning removal of any

Actions and will assure that the Debtors' estates do not forfeit valuable rights under Section 1452. Further, the rights of the Debtors' adversaries will not be prejudiced by such an extension because any party to an Action that is removed may seek to have it remanded to the state court pursuant to 28 U.S.C. § 1452(b).

12. The Debtors submit that this request to extend the deadline for removing the Actions is reasonable and practical in light of the present posture of these cases. Accordingly, the Debtors respectfully submit that the relief sought is in the best interest of the Debtors and creditors of these Debtors' estates.

13. Furthermore, this Court is authorized to grant the relief requested. *See, e.g., Pacor v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984); *Caperton v. A.T. Massey Coal Co.*, 251 B.R. 322, 325 (S.D. W.Va. 2000) (Bankruptcy Rule 9006 authorizes the enlargement of time periods for removing actions under Bankruptcy Rule 9027); *Jandous Elec. Constr. Corp. v. City of New York (In re Jandous Elec. Constr. Corp.)*, 106 B.R. 48, 49–50 (Bankr. S.D.N.Y. 1989) (a court may extend the time in which to file motions to remove civil actions pursuant to Bankruptcy Rule 9006); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (Bankruptcy Rule 9006 was designed to give bankruptcy judges the authority to enlarge the removal periods under Bankruptcy Rule 9027(a)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (Bankruptcy Rule 9006 authorizes the expansion of time to file notice of removal).

RESERVATION OF RIGHTS

14. The Debtors reserve the right to seek further extensions of the period in which they may remove civil actions pursuant to Bankruptcy Rule 9027.

NOTICE

15. Notice of this Motion has been given to: (i) the U.S. Trustee; (ii) the known non-Debtor parties to the Actions (or counsel to such parties, if known); and (iii) parties requesting

notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is necessary.

NO PRIOR REQUEST

16. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the proposed order, substantially in the form attached to this Motion as **Exhibit A**, and grant such other and further relief as may be appropriate.

DATED: December 2, 2019

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