

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

(Joint Administration Requested)

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER
AUTHORIZING EMPLOYMENT AND RETENTION OF
BMC GROUP, INC. AS CLAIMS AND
NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

SportCo Holdings, Inc. and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (these “Chapter 11 Cases”), hereby submit this application (the “Application”), pursuant to section 156(c) of Title 28 of the United States Code (the “Judicial Code”), Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and the Court’s *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, instituted by the Clerk on February 1, 2012, (the “Claims Agent Protocol”), for entry of an order (the “Retention Order”), in substantially the form attached hereto as **Exhibit A**, authorizing the Debtors to retain and employ BMC Group, Inc. (“BMC”) as the official claims and noticing agent (the “Claims and Noticing Agent”) in these Chapter 11 Cases, effective *nunc pro tunc* to the Petition Date (as defined below). The terms of BMC’s retention are set forth in the engagement agreement, effective as of February 7, 2019,

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry's Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors' corporate headquarters and the service address for all Debtors is 267 Columbia Ave. Chapin, SC, 29036.

between BMC and the Debtors (the “Engagement Agreement”);² *provided, however*, that in this Application, the Debtors are seeking approval of only those terms and provisions of the Engagement Agreement that are consistent with 28 U.S.C. § 156(c) and the proposed Retention Order. In the event there is any inconsistency between the Application, the Retention Order, and the Engagement Agreement, the Debtors respectfully request that the Retention Order govern. In support of this Motion, the Debtors rely upon the *Declaration of Bradley P. Johnson in Support of Debtor’s Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), which is being filed contemporaneously herewith.³ In further support of this Application, the Debtors submit the *Declaration of Tinamarie Feil in Support of the Debtors’ Application for Entry of an Order Authorizing Employment and Retention of BMC Group, Inc. as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the “Claims Agent Declaration”).⁴

JURISDICTION

1. This Court has jurisdiction over this Application 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are 28 U.S.C. § 156(c), section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2002-1(f) of the Local Rules and the Claims Agent Protocol.

² The Engagement Agreement is attached hereto as **Exhibit B**.

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

⁴ The Claims Agent Declaration is attached hereto as **Exhibit C**.

4. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Application if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

BACKGROUND

5. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including description of their business, capital structure, and the circumstances leading to these Chapter 11 Cases is set forth in detail within the First Day Declaration and is fully incorporated herein by reference.

6. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. No trustee, examiner, creditors' committee, or other official committee has been appointed in these Chapter 11 Cases.

8. Concurrently with the filing of this Application, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

RELIEF REQUESTED

9. By this Application, the Debtors respectfully request entry of the Retention Order, substantially in the form attached hereto as **Exhibit A**, under 28 U.S.C. § 156(c), Bankruptcy Code section 105(a), and Local Rule 2002-1(f), authorizing the employment and retention of BMC as Claims and Noticing Agent for the Debtors in these Chapter 11 Cases, including assuming full responsibility for the distribution of notices and maintenance, processing and docketing of proofs of claim filed in these Chapter 11 Cases, effective *nunc pro tunc* to the Petition Date. The Debtors' selection of BMC to act as the Claims and Noticing Agent has satisfied the Court's Claims Agent

Protocol in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that BMC's rates are competitive and reasonable given BMC's quality of services and expertise. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be in excess of 500 entities to be noticed. Local Rule 2002-1(f) provides that "[i]n all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file [a] motion [to retain a claims and noticing agent] on the first day of the case or within seven (7) days thereafter." In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is required by Local Rule 2002-1(f) and is otherwise in the best interests of both the Debtors' estates and their creditors.

10. The Debtors will seek, by separate application, authorization to retain and employ BMC as an administrative advisor in these Chapter 11 Cases under Bankruptcy Code section 327(a), as the administration of these Chapter 11 Cases will require BMC to perform duties outside the scope of 28 U.S.C. § 156(c).

BASIS FOR RELIEF REQUESTED

I. Facts Specific to Relief Requested

A. BMC's Qualifications

11. BMC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. BMC's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases, including in matters of this size and complexity. BMC's professionals have acted as official claims and noticing agent in many large bankruptcy

cases in this district and in other districts nationwide. BMC's recent cases in this and other districts include: *In re JRV Group USA L.P.*, 19-11095 (CS) (Bankr. D. Del. 2019); *In re Kiko USA, Inc.*, 18-10069 (MW) (Bankr. D. Del. 2018); *In re Venoco, Inc.*, No. 16-10655 (KG) (Bankr. D. Del. 2016); *In re Restaurants Acquisition I, LLC*, No.15-12406 (KG) (Bankr. D. Del. 2015); *In re F-Squared Investment Management, LLC*, No. 15-11469 (LSS); *In re RAAM Global Energy Corporation*, No. 15-35615 (Bankr. S.D. TX Dec. 7, 2015); *In re Atari, Inc.*, No. 13-10176 (JMP) (Bankr. S.D.N.Y. Feb. 15, 2013); *In re CCHG Liquidating Co.*, 12-01220 (JW) (Bankr. D.S.C. 2012); and *In re Jennifer Convertibles, Inc.*, No. 10-13779 (ALG) (Bankr. S.D.N.Y. July 22, 2010).

12. Retaining BMC as Claims and Noticing Agent will expedite the distribution of notices and the processing of claims, facilitate other administrative aspects of these Chapter 11 Cases, and relieve the Office of the Clerk of the Bankruptcy Court (the "Clerk") of these administrative burdens.

B. Services to be Provided

13. The Application pertains only to the work to be performed by BMC under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f). By this Application, the Debtors seek to retain BMC as their Claims and Noticing Agent, consistent with the Engagement Agreement, to provide, to the extent requested by the Debtors, bankruptcy administration services (the "Claims and Noticing Services"), including:

- a) Prepare and serve required notices and documents in these Chapter 11 Cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") in the form and manner directed by the Debtors and/or the Court, including: (i) notice of the commencement of these Chapter 11 Cases, (ii) notice of any claims bar date, (iii) notices of transfers of claims (if any), (iv) notices of objections to claims and objections to transfers of claims (if any), (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date

of the plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these Chapter 11 Cases;

- b) Maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs, listing the Debtors known creditors and the amounts owed, if requested;
- c) Maintain (i) a list of all potential creditors, equity holders, and any parties in interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance under Bankruptcy Rule 9010; update and make those lists available upon request by any party in interest or the Clerk;
- d) Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court;
- e) For *all* notices, motions, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service that includes: (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) an alphabetical list of persons to whom it was mailed with their addresses, (iii) the manner of service, and (iv) the date served;
- f) Process any proofs of claim received, including those received by the Clerk, check processing for accuracy, and maintain the original proofs of claim in a secure area;
- g) Maintain the official claims register (if any) for each Debtor (collectively, the "Claims Registers") on behalf of the Clerk; provide the Clerk, upon the Clerk's request, with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- h) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- i) Record any transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- j) Relocate any court-filed proofs of claim to BMC's offices, not less than weekly;

- k) Upon completion of the docketing process for any claims received to date for each case, provide to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- l) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on or changes to the Claims Register (if any) and any service or mailing lists, including the identification and elimination of duplicative names, addresses, and email addresses from such lists;
- m) Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- n) Assist in the dissemination of information to the public and respond to requests for administrative information on these Chapter 11 Cases as directed by the Debtors or the Court, including through a case website or call center;
- o) If these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of notice to BMC of entry of the order converting the cases;
- p) Thirty (30) days before the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing BMC as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these Chapter 11 Cases;
- q) Within seven (7) days of notice to BMC of entry of an order closing these Chapter 11 Cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of these Chapter 11 Cases; and
- r) At the close of these Chapter 11 Cases, box and transport all original documents, in proper format, as provided by the Clerk's office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's office.

12. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by BMC.

13. BMC will not employ any past or present employee of the Debtors for work that involves these Chapter 11 Cases.

C. Professional Compensation

14. The Debtors respectfully request that the undisputed fees and expenses incurred by BMC in the performance of the above services be treated as administrative expenses of the Chapter 11 Cases under 28 U.S.C. § 156(c) and Bankruptcy Code section 503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the Court. BMC agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on: (i) the Debtors; (ii) the Office of the United States Trustee; (iii) counsel to the Debtors; (iv) counsel to the DIP Agent; (v) counsel to the Prepetition Lender Agents; (vi) counsel for any official committee monitoring the expenses of the Debtors; and (vii) any party in interest that specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if they are unable to achieve resolution on their own, the parties may seek the Court's intervention.

15. Prior to the Petition Date, the Debtors provided BMC with a \$20,000 retainer. BMC seeks to hold any amounts in the retainer under the Engagement Agreement as of the Petition Date during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

D. Representation of Disinterestedness

16. Although the Debtors do not propose by this Application to employ BMC under Bankruptcy Code section 327 (such retention for BMC's proposed services as administrative agent will be sought by separate application), BMC has nonetheless reviewed its electronic database to determine whether it has any relationships with the Debtors' creditors and other parties in interest identified by the Debtors. To the best of the Debtors' knowledge, information, and belief, and

except as disclosed in the Claims Agent Declaration, BMC has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

17. Moreover, in connection with its retention as Claims and Noticing Agent, BMC represents in the Claims Agent Declaration that, among other things:

- a) BMC is not a creditor of the Debtors;
- b) BMC will not consider itself employed by the United States government and will not seek any compensation from the United States government in its capacity as Claims and Noticing Agent in these Chapter 11 Cases;
- c) By accepting employment in these Chapter 11 Cases, BMC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- d) In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, BMC will not be an agent of the United States and will not act on behalf of the United States;
- e) BMC will not employ any past or present employees of the Debtors in connection with its work as Claims and Noticing Agent in these Chapter 11 Cases;
- f) BMC is a "disinterested person" as that term is defined in Bankruptcy Code section 101(14) for the matters on which it is engaged;
- g) In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, BMC will not intentionally misrepresent any fact to any person;
- h) BMC's receipt and recordation of claims (if any) and claim transfers will fall under the supervision and control of the Clerk's office;
- i) BMC will comply with all requests of the Clerk's office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j) The Clerk's office will bear none of the costs of BMC's services as Claims and Noticing Agent in these Chapter 11 Cases.

BMC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require additional disclosure.

E. Compliance with Claims Agent Protocol

18. The Debtors represent that this Application complies with the Claims Agent Protocol, and that it substantially conforms to the standard section 156(c) application in use in this Court. To the extent that there is any inconsistency between this Application, the Retention Order and the Engagement Agreement, the Retention Order shall govern.

II. LEGAL BASIS FOR RELIEF REQUESTED

A. Retention and Employment of BMC as Claims and Noticing Agent is Appropriate Pursuant to 28 U.S.C. Section 156(c), Bankruptcy Code Section 105(a), and Local Rule 2002-1(f)

19. Under Judicial Code section 156(c), Bankruptcy Code section 105(a), Local Rule 2002-1(f), and the Claims Agent Protocol, the Debtors are permitted to retain and employ BMC as Claims and Noticing Agent in these Chapter 11 Cases in order for BMC to assume full responsibility for the distribution of notices, the maintenance, processing, and docketing of proofs of claim, and other administrative aspects of these Chapter 11 Cases.

20. The authority to employ the services of a claims and noticing agent is found in Judicial Code section 156, which sets forth that:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

21. Bankruptcy Code section 105 also provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by any party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or

appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

22. Finally, Local Rule 2002-1(f) provides:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (which can be found on the Court's website) and shall perform the Claims and Noticing Services.

23. The Debtors anticipate that these Chapter 11 Cases will require a large number of entities to be noticed. In view of that large number and the complexity of the Debtors' businesses, the Debtors submit that the employment and retention of a claims and noticing agent is both required by Local Rule 2002-1(f) and in the best interests of the Debtors' estates and creditors. Relieved of the burdens associated with the Claims and Noticing Services, the Debtors will be able to devote their full attention and resources to maximizing value for their stakeholders and facilitating the orderly administration of these Chapter 11 Cases.

24. In accordance with the Claims Agent Protocol, prior to the selection of BMC as Claims and Noticing Agent, the Debtors reviewed and compared engagement proposals from three court-approved claims and noticing agents, including BMC, to ensure a competitive process. The Debtors submit that, based on the engagement proposals obtained and reviewed, BMC's rates are competitive and reasonable given the quality of services and expertise BMC provides. Although the terms of BMC's employment and retention are set forth in the Engagement Agreement, BMC is seeking approval solely of the terms and provisions as set forth in this Application and the Retention Order. In the event of any inconsistency between the Engagement Agreement, the

Application, and the Retention Order, the Retention Order governs; provided, however, that the cap for BMC's fees, as set forth in the Engagement Agreement, shall govern in all circumstances.

B. Nunc Pro Tunc Relief Is Appropriate

25. In accordance with the Debtors' request, BMC has agreed to serve as Claims and Noticing Agent on and after the Petition Date with assurances that the Debtors would seek approval of its employment and retention, effective *nunc pro tunc* to the Petition Date, so that BMC can be compensated for services rendered before approval of this Application. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as proposed in this Application, because BMC has provided and continues to provide valuable services to the Debtors' estates in the interim period. Courts in this district have routinely approved *nunc pro tunc* employment in chapter 11 cases.⁵

26. Accordingly, the Debtors respectfully request entry of the Retention Order authorizing the Debtors to retain and employ BMC as Claims and Noticing Agent, effective *nunc pro tunc* to the Petition Date.

NOTICE

27. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the DIP Agent; (d) the Prepetition Lender Agents; (e) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (g) all parties entitled to

⁵ See, e.g., *In re Cal Dive Int'l Inc., et al*, Case No. 15-10458 (CSS) (Bankr. D. Del. Mar. 6, 2015) [Docket No. 58]; *In re The Wet Seal, Inc., et al.*, Case No. 15-10081 (CSS) (Bankr. D. Del. Jan. 20, 2015) [Docket No. 93]; *In re Endeavour Operating Corp., et al.*, Case No. 14-12308 (KJC) (Bankr. D. Del. Nov. 6, 2014) [Docket No. 152]; *In re AmCad Holdings, LLC, et al.*, Case No. 14-12168 (MFW) (Bankr. D. Del. Sept. 23, 2014) [Docket No. 29]; *In re Source Home Entm't, LLC, et al.*, Case No. 14-11553 (KG) (Bankr. D. Del. July 18, 2014) [Docket No. 141]; *In re The Dolan Co., et al.*, Case No. 14-10614 (BLS) (Bankr. D. Del. Mar. 23, 2014) [Docket No. 71]; *In re Event Rentals, Inc., et al.*, Case No. 14-10282 (PJW) (Bankr. D. Del. Feb. 19, 2014) [Docket No. 61].

notice pursuant to Local Rule 2013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR APPLICATION

28. The Debtors have not made any prior application for the relief sought in this Application to this Court or any other.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

29. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and any other relief as is just and proper.

Dated: June 10, 2019
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)

Brenna A. Dolphin (Del. Bar No. 5604)

222 Delaware Avenue, Suite 1101

Wilmington, Delaware 19801

Telephone: (302) 252-0920

Facsimile: (302) 252-0921

cward@polsinelli.com

bdolphin@polsinelli.com

-and-

MCDERMOTT WILL & EMERY LLP

Timothy W. Walsh (*pro hac vice* pending)

Darren Azman (*pro hac vice* pending)

Riley T. Orloff (*pro hac vice* pending)

340 Madison Avenue

New York, New York 10173-1922

Telephone: (212) 547-5400

Facsimile: (212) 547-5444

Email: twwalsh@mwe.com

dazman@mwe.com

rorloff@mwe.com

*Proposed Counsel to the Debtors and
Debtors in Possession*