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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**SCHMAUS FAMILY
PROPERTIES, LLC,**

Debtor.

Case No. **20-40002-BPH**

**ORDER EXTENDING EXCLUSIVITY PERIOD
and
SETTING (A) STATUS CONFERENCE; (B) DEADLINE FOR ELECTION
UNDER 11 U.S.C. § 1111(b)(2); AND (C) OTHER DEADLINES IN
CHAPTER 11 CASE COMMENCED UNDER SUBCHAPTER V OF
CHAPTER 11**

At Butte in said District this 18th day of May, 2020.

Debtor commenced this Chapter 11¹ bankruptcy on January 3, 2020. On May 1, 2020, Debtor amended its petition electing to: (1) be a small business debtor as defined in § 101(51D) and (2) proceed under Subchapter V of Chapter 11. On that same date, Debtor filed a Motion for Extension of Exclusivity Period and for an Order Setting Deadlines in Accordance with the Small Business Reorganization Act of 2019 (“Motion”). Debtor’s Motion is accompanied by a notice which gives parties-in-interest the opportunity to respond and request a hearing within 14 days as required by Mont. LBR 9013-1, and provides that if no objections are timely filed the

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure. All references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the Clerk of Court.

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Court may grant the Motion, as a failure to respond shall be deemed an admission that the relief requested should be granted. No response and request for hearing has been filed.

The Small Business Reorganization Act of 2019 (“SBRA”), was signed into law on August 23, 2019.² See Public Law No. 116-54. It became effective on February 19, 2020. *Id.* In the following well-reasoned decisions under the new subchapter V of Chapter 11, *In re Progressive Solutions, Inc.*, 2020 WL 975464 (Bankr. C.D.Cal. Feb. 21, 2020), *In re Moore Properties of Pers. Cty., LLC*, 2020 WL 995544 (Bankr. M.D.N.C. Feb. 28, 2020), *In re Body Transit, Inc. d/b/a Rascals Fitness*, 2020 WL 1486784 (Bankr. E.D.Pa. Mar. 24, 2020), the courts found there was no legal reason that a small business debtor in a case pending on the effective date of the SBRA was prohibited from amending its bankruptcy petition to elect to proceed under subchapter V.

Debtor’s election does create issues related to holding a timely Initial Debtor Interview, and a timely § 341(a) Meeting of Creditors that would include a Subchapter V Trustee’s participation. The Court can find no Statute or Rule which would prohibit the Court from extending the time to hold the status conference or submit a report. The Court will treat today’s date as the new Entry of Order for Relief date.

Given that Debtor’s recent election appears to be legally permissible, given the lack of any opposition to Debtor’s Motion after notice, and in accordance with Subchapter V of Chapter 11 of Title 11 of the United States Code,

IT IS ORDERED:

² For a thorough discussion of SBRA’s legislative history, see *In re Progressive Solutions, Inc.*, 2020 WL 975464 (Bankr. C.D.Cal. Feb. 21, 2020).

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1. Debtor's Motion filed at ECF No. 31 is granted.

2. The Court will convene a telephonic status conference on **Wednesday, June 24, 2020, at 10:15 a.m.** To participate in the telephonic conference, the parties shall, on the aforementioned date and time, dial into the Court's telephonic conferencing system at 858-812-0972; the Numeric Access Code for the conference is 3000000# followed by 3100566#. *Debtor and Debtor's counsel shall appear and participate in the telephonic status conference.*

3. At least 14 days prior to the date of the foregoing status conference, Debtor shall file the report required by 11 U.S.C. § 1188(c) and shall serve that report on the case or standing trustee, the United States Trustee, and all parties-in-interest.

4. Within 14 days following entry of the order for relief, Debtor shall serve notice of the commencement of this case to any entity known to be holding money or property subject to withdrawal or order of the Debtor. Fed. R. Bankr. P. 2015(a)(4).

5. On or before **July 20, 2020**, Debtor shall file and serve a plan. 11 U.S.C. § 1189(b). Such plan shall conform to the requirements of 11 U.S.C. §§ 1190 and 1191, along with the applicable provisions of 11 U.S.C. §§ 1123 and 1129. Unless otherwise ordered in specific cases, use of Official Form 425 is mandatory in this district.

6. The court expects compliance with 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B), which require a Debtor in a voluntary case filed under Subchapter V of Title 11 to file and serve the following documents with the petition for relief:

- a. Debtor's most recent balance sheet;
- b. Debtor's most recent statement of operations;
- c. Debtor's cash-flow statement; and
- d. Debtor's most recent federal income tax return.

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If Debtor has not prepared one or more of the foregoing documents or, in the case of a federal income tax return, has not filed such a return, then in lieu of such document(s) and/or return, 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B) require the Debtor to file with the petition for relief a declaration attesting to that fact under penalty of perjury.

7. Any secured creditor that wishes to make an election under 11 U.S.C. § 1111(b)(2) shall do so no later than 14 days following the filing of the plan.

8. Per the Notice of Commencement of Case filed at ECF No. 6, the deadline for filing a proof of claim was May 6, 2020. That deadline has passed so the Court will not reset or extend that expired deadline.

9. Within 14 days following substantial consummation of any confirmed plan, Debtor shall file, and shall serve on the case or standing trustee, the United States Trustee, and all parties in interest a notice of substantial consummation. 11 U.S.C. § 1183(c)(2).

10. Failure to comply with this order may result in the imposition of sanctions against Debtor or Debtor's counsel. In the court's discretion, these sanctions might include, but are not limited to, conversion or dismissal of this case, appointment of a trustee, and/or monetary sanctions.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana