

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

In re

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Post-Confirmation Debtors.

Chapter 11

Case No. 18-11780 (BLS)

Substantively Consolidated

Hearing Date: September 16, 2020 at 10:00 a.m. (ET)

Obj. Deadline: September 9, 2020 at 4:00 p.m. (ET)

**MOTION OF LIQUIDATING TRUSTEE FOR AN ORDER
EXTENDING THE CLAIMS OBJECTION DEADLINE TO MARCH 21, 2021**

The trustee (the “Liquidating Trustee”) of the Brookstone Liquidating Trust (the “Trust”), by and through its undersigned counsel, hereby submits this Motion for an order substantially in the form attached hereto as Exhibit A, extending the deadline established by the Plan to object to Claims (each as defined in the Plan) for approximately 180 days, from September 22, 2020 through and including March 21, 2021. In support of the Motion, the Liquidating Trustee respectfully states:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion 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, and Article XII of the *Third Amended Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents* filed March 15, 2019 (as confirmed, the “Plan”).² This is a core

¹ The Debtors in these chapter 11 cases, along with the last four digits of each entity’s tax identification number, are: Brookstone Holdings Corp. (4638); Brookstone, Inc. (2895); Brookstone Company, Inc. (3478); Brookstone Retail Puerto Rico, Inc. (5552); Brookstone International Holdings, Inc. (8382); Brookstone Purchasing, Inc. (2514); Brookstone Stores, Inc. (2513); Big Blue Audio LLC (N/A); Brookstone Holdings, Inc. (2515); and Brookstone Properties, Inc. (2517).

² Docket No. 1138-1. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

proceeding pursuant to 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and other bases for the relief requested herein are set forth in sections 105(a), 502 and 503 of the Bankruptcy Code, Bankruptcy Rule 9006, Rules 9006-1 and 9006-2 of the *Local Rules Of Bankruptcy Practice And Procedure Of The United States Bankruptcy Court For The District Of Delaware* (the “Local Rules”), and Articles I.A.26 and VII.B. of the Plan.

3. Pursuant to Local Rule 9013-1(f), the Liquidating Trustee consents to the entry of a final judgment or order with respect to the Motion if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

A. Procedural Background

4. On August 2, 2018 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. From and after the Petition Date, each Debtor operated its business and managed its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On October 31, 2018, the Court entered the *Order (A) Establishing Bar Dates for Filing Proofs of Claim and Procedures Related Thereto and (B) Approving the Form and Manner of Notice Thereof* (the “Bar Date Order”) establishing, among other deadlines, (i) December 5, 2018 as the deadline, for each person or entity other than governmental units, to file proofs of prepetition claims, including administrative expense claims arising pursuant to section 503(b)(9) of the Bankruptcy Code (the “General Bar Date”); and (ii) January 29, 2019 as

the last date for governmental units to file proofs of claim that arose before the Petition Date (the “Government Bar Date”).³

6. Notice of the General Bar Date and the Government Bar Date was mailed to all known creditors and interest holders.⁴

7. Pursuant to Article II.A of the Plan, any holder of an Administrative Claim was required to file a request for payment of such Administrative Claim on or prior to the date that is 45 days after the Effective Date of the Plan (the “Administrative Expense Bar Date” and, together with the General Bar Date and the Government Bar Date, the “Bar Dates”).

8. On March 20, 2019, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Third Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Brookstone Holdings Corp., et al., Submitted by the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents* (the “Confirmation Order”),⁵ and the Plan became effective on April 1, 2019 (the “Effective Date”).⁶

9. The Plan and Confirmation Order provide for the establishment of the Trust on the Effective Date according to the terms and conditions of the Liquidating Trust Agreement (the “Trust Agreement”), at which time the Liquidating Trustee was appointed to administer the Trust.

10. Under Article IV.C.3 of the Plan and section 2.1(f) of the Trust Agreement, the Liquidating Trustee is authorized, among other things, to cause the Trust to investigate, review, object to and resolve all Claims filed against the Debtors’ estates.⁷

³ Docket No. 653.

⁴ Docket Nos. 756, 757, 767, 798, 799, 826, 827, 855 and 883.

⁵ Docket No. 1138.

⁶ Docket No. 1157.

⁷ *See also* 11 U.S.C. § 502(b).

11. Article I.A.26 of the Plan provides that all objections to all Claims must be filed within 180 calendar days after the Effective Date of the Plan (the “Claims Objection Deadline”), subject to extension by the Bankruptcy Court. On October 15, 2020, the Court entered an order extending the Claims Objection Deadline through and including March 26, 2020.⁸ On March 31, 2020, the Court entered an order further extending the Claims Objection Deadline through and including September 22, 2020.⁹

B. Claims Reconciliation Background

12. The Debtors’ register of claims (the “Claims Register”), prepared by Omni Agent Solutions (“Omni”), reflects that as of the date of this Motion, over 2,550 proofs of claim have been filed in the Debtors’ chapter 11 cases (the “Filed Claims”), in addition to claims that are listed on the Debtors’ Schedules (the “Scheduled Claims”).

13. Since its appointment, the Liquidating Trustee has worked to reconcile all Filed and Scheduled Claims, with a view toward maximizing distributions to Trust Beneficiaries. Since its appointment, the Liquidating Trustee has: (i) filed 18 omnibus objections, addressing approximately 1,000 Claims in the aggregate; (ii) informally negotiated with creditors to reconcile and resolve other disputed Claims that have not, to date, been the subject of a filed objection; (iii) worked with its tax professionals to complete numerous federal, state and local tax returns for the legacy Debtors and, thereafter, filed a motion to mark as satisfied certain tax claims asserted in estimated amounts;¹⁰ (iv) sent follow-up requests to claimants with outstanding IRS tax forms and filed a motion to disallow approximately 1,000 Claims for failure

⁸ Docket No. 1353.

⁹ Docket No. 1581.

¹⁰ Docket No. 1571.

to provide such forms;¹¹ and (v) filed a notice identifying approximately 120 Filed and Scheduled Claims as having been paid and satisfied.¹² Collectively, these endeavors have resulted in the reduction of the claims pool by over \$50 million (across all priority levels) to date, in addition to the elimination of numerous unliquidated claims that would otherwise be an impediment to any distributions.

14. As a result of these efforts, the Liquidating Trustee has been able to pay in full all secured, administrative and priority claims that have been Allowed to date, and make two interim distributions of 10.5% and 4.0%, respectively, on account of Allowed General Unsecured Claims. The Liquidating Trustee currently anticipates making at least one additional distribution on account of Allowed General Unsecured Claims in the future.

15. Although the Liquidating Trustee has been working to reconcile all Claims, and significant progress has been made since the Effective Date, further work remains. The Liquidating Trustee is continuing its review and analysis of the Claims Register to identify unresolved or otherwise objectionable claims, and believes that this process is in its final stages. Further, notwithstanding the passage more than a year ago of the applicable deadlines for filing claims, late claims continue to be filed. Finally, the Liquidating Trustee remains a party to 24 unresolved adversary proceedings seeking the avoidance and recovery of preferential transfers pursuant to section 547(b) of the Bankruptcy Code. To the extent the subject transfers are not returned, the Liquidating Trustee will pursue disallowance of any Filed or Scheduled Claims of the defendants in such actions pursuant to section 502(d) of the Bankruptcy Code. The Liquidating Trustee will continue to resolve remaining Claims as soon as reasonably practical under the circumstances, but needs additional time to do so.

¹¹ Docket No. 1592.

¹² Docket No. 1604.

RELIEF REQUESTED

16. The Liquidating Trustee respectfully requests entry of an order extending the Claims Objection Deadline as to all Claims, inclusive of Filed Claims, Scheduled Claims and Claims that continue to be filed, for a period of approximately 180 days, from September 22, 2020 through and including March 21, 2021.¹³ The proposed extension is without prejudice to the Liquidating Trustee's right to seek additional extensions of the Claims Objection Deadline as appropriate.

BASIS FOR RELIEF

17. Sections 502 and 503 of the Bankruptcy Code contemplate that claims will be challenged when appropriate and, if necessary, estimated.¹⁴ On behalf of the Debtors' estates, the Plan vests the discretion to object to or seek estimation of all Claims in the Liquidating Trustee. Although the Plan sets an initial deadline by which such challenges must be raised, it also expressly contemplates extension of the Claims Objection Deadline by order of the Bankruptcy Court.¹⁵

18. Bankruptcy Rule 9006(b) also provides for extensions of time for cause. Specifically:

[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

¹³ Pursuant to Local Rule 9006-2, the filing of this Motion prior to the expiration of the current Claims Objection Deadline serves to automatically extend the deadline until such time as the Bankruptcy Court rules on this Motion. *See* Del. Bankr. LR 9006-2.

¹⁴ *See* 11 U.S.C. §§ 502(b)-(c), 503.

¹⁵ Plan Art. I.A.26, VII.B. The Plan provides that all objections to Claims and Interests must be filed by the Claim Objection Deadline, unless a different time is set by an order of the Bankruptcy Court.

enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.¹⁶

Finally, section 105 of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”¹⁷

19. Extension of the Claims Objection Deadline is not sought coercively for purposes of delay, nor will it affect any claimant’s or interest holder’s substantive defense(s) to any objection. This Motion represents only the third extension that has been requested since the Plan was confirmed and became effective approximately 17 months ago. Over that time period, as discussed above, the Liquidating Trustee has made substantial progress in reviewing and reconciling claims since the Trust’s inception, addressing more than 2,000 Claims and reducing the Claims pool by more than \$50 million across all priority levels.

20. The Liquidating Trustee’s request for an extension of the Claims Objection Deadline will not prejudice any claimant or any other party in interest, and will benefit persons holding valid Claims. Rather, the extension is intended to preserve resources necessary to pursue recoveries on account of Allowed Claims. Absent the extension, the Debtors’ estates and creditors may suffer unnecessary and unfair prejudice. Either the Liquidating Trustee will be precluded from challenging invalid and/or overstated Claims or, alternatively, it will be forced to lodge hastily prepared “protective” objections without the benefit of a full review and analysis by the Liquidating Trustee and its professionals.

21. The requested extension will not only allow the Liquidating Trustee to continue its review of the pool of remaining unresolved Claims for which the Trust is responsible, but will also conserve the limited resources of the Debtors’ estates to the benefit of

¹⁶ Fed R. Bankr. P. 9006(b)(1).

¹⁷ 11 U.S.C. § 105(a).

all creditors by allowing the Trust time to pursue settlement, and avoid the delay and expense of unnecessary objections and litigation.

NOTICE

22. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; and (ii) those parties that have requested notice pursuant to Bankruptcy Rule 2002. In light of the procedural nature of the post-confirmation relief requested herein, the Liquidating Trustee submits that such notice is sufficient under the circumstances and that no other or further notice is required.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, extending the Claims Objection Deadline for a period of approximately 180 days, from September 22, 2020 through and including March 21, 2021, without prejudice to Liquidating Trustee's right to seek additional extensions of such deadline as appropriate; and (ii) granting such other and further relief as the Bankruptcy Court may deem just and proper.

Dated: Wilmington, Delaware
September 1, 2020

COLE SCHOTZ P.C.

By: /s/ Justin R. Alberto
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Co-Counsel to the Brookstone Liquidating Trust

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

In re

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Post-Confirmation Debtors.

Chapter 11

Case No. 18-11780 (BLS)

Substantively Consolidated

Hearing Date: September 16, 2020 at 10:00 a.m. (ET)

Obj. Deadline: September 9, 2020 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF LIQUIDATING TRUSTEE FOR AN ORDER
EXTENDING THE CLAIMS OBJECTION DEADLINE TO MARCH 21, 2021**

PLEASE TAKE NOTICE that on September 1, 2020, the trustee (the “Liquidating Trustee”) of the Brookstone Liquidating Trust (the “Trust”) filed the attached *Motion of Liquidating Trustee for an Order Extending the Claims Objection Deadline to March 21, 2021* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel on or before **September 9, 2020 at 4:00 p.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that if any objections or responses are received, a hearing with respect to the Motion will be held on **September 16, 2020 at 10:00 a.m. (ET)** before The Honorable Brendan L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801.

¹ The debtors in these chapter 11 cases, along with the last four digits of each entity’s tax identification number, are: Brookstone Holdings Corp. (4638); Brookstone, Inc. (2895); Brookstone Company, Inc. (3478); Brookstone Retail Puerto Rico, Inc. (5552); Brookstone International Holdings, Inc. (8382); Brookstone Purchasing, Inc. (2514); Brookstone Stores, Inc. (2513); Big Blue Audio LLC (N/A); Brookstone Holdings, Inc. (2515); and Brookstone Properties, Inc. (2517).

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
September 1, 2020

COLE SCHOTZ P.C.

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EXHIBIT A

(Proposed Order)

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

In re

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Post-Confirmation Debtors.

Chapter 11

Case No. 18-11780 (BLS)

(Jointly Administered)

Re: D.I. ____

**ORDER EXTENDING THE CLAIMS
OBJECTION DEADLINE TO MARCH 21, 2021**

Upon the motion (the “Motion”)² of the Liquidating Trustee for an order extending the deadline established by the Plan to object to all Claims for approximately 180 days, from September 22, 2020 through and including March 21, 2021; and the Bankruptcy Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court; consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; the Bankruptcy Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Claims Objection Deadline shall be, and hereby is, extended from September 22, 2020 through and including March 21, 2021 as to all Claims; and it is further

ORDERED, that this Order is without prejudice to the Liquidating Trustee's right to seek further extensions of the Claims Objection Deadline; and it is further

ORDERED, that the Bankruptcy Court shall retain jurisdiction to construe and enforce this Order.