IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

In re:	)	
	)	
FRANCHISE SERVICES OF NORTH AMERICA, INC.	)	**CASE NO. 17-02316-EE**
	)	**Chapter 11**
Debtor	)	
	)	

MOTION OF THE DEBTOR TO AMEND AGREED SCHEDULING ORDER AND TO EXTEND PERIOD OF EXCLUSIVITY FOR FILING OF DISCLOSURE STATEMENT AND CHAPTER 11 PLAN PURSUANT TO SECTION 1121(d)(1)
[Dkt. # 136]

Franchise Services of North America, Inc., the Debtor and debtor-in-possession in this Chapter 11 case (the "***Debtor***"), by and through its undersigned attorney, files this *Motion of the Debtor to Amend Agreed Scheduling Order and to Extend Period of Exclusivity for Filing of Disclosure Statement and Chapter 11 Plan Pursuant to Section 1121(d)(1)* (the "***Motion***"), which requests that the time periods set forth in the Agreed Scheduling Order be amended and that the Court grant the Debtor an additional 120 days within which to file the proposed Chapter 11 Plan (the "***Plan***") and Disclosure Statement, and a similar extension of 120 days within which to solicit acceptances on such a Plan. In support of this Motion, the Debtor respectfully represents as follows:

I. JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

II. BACKGROUND

2. On June 26, 2017 (the "***Petition Date***"), the Debtor filed a voluntary petition for relief, and thereby commenced a case under chapter 11 of title 11 of the United States Code (the

"***Bankruptcy Code***"), in the United States Bankruptcy Court for the Southern District of Mississippi (the "***Court***").

3. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is authorized to operate its business and manage its property as debtor-in-possession. No trustee or examiner has been appointed, and no official committee of creditors or equity interest holders has been established.

4. FSNA is a corporation organized and existing under the laws of Delaware, with its corporate headquarters and principal place of business located at 1052 Highland Colony Parkway, Suite 204, Ridgeland, Mississippi 39157. FSNA presently owns 100% of the stock of U-Save Holdings, Inc. ("***U-Save Holdings***"). U-Save Holdings, in turn, owns 100% of the stock of U-Save Auto Rental of America, Inc. ("***U-Save Auto***"), which in turn owns 100% of the stock of Auto Rental Resource Center, Inc., U-Save Car Sales, Inc., and Peakstone Financial Services, Inc. (the "***Subsidiaries***"). U-Save Holdings and U-Save Auto are corporations organized and existing under the laws of Mississippi, with their corporate headquarters and principal place of business located at 1052 Highland Colony Parkway, Suite 204, Ridgeland, Mississippi 39157. FSNA is also the sole shareholder of FSW LLC ("***FSW***"), formerly known as Simply Wheelz LLC d/b/a/ Advantage Rent-A-Car ("***Simply Wheelz***"), which is a Delaware limited liability company having its principal place of business at 1052 Highland Colony Parkway, Suite 204, Ridgeland, Mississippi 39157. Substantially all of the assets related to the Advantage Rent A Car business, however, were sold through the Simply Wheelz chapter 11 bankruptcy case[1] pursuant to various orders of the Bankruptcy Court to The Catalyst Group (or its assignee), and then in secondary and tertiary sales in that bankruptcy case to Hertz, Avis, and Sixt that also

[1] *In re Simply Wheelz LLC, d/b/a Advantage Rent A Car*, United States Bankruptcy Court for the Southern District of Mississippi, Case No. 13-03332-EE.

were approved by the Bankruptcy Court.[2] As a result of these sales of its assets the Chief Restructuring Officer of the Debtor testified at the final hearing on the First Day Motions that the stock of FSW LLC, formerly Simply Wheelz LLC, which remains a wholly owned subsidiary of the Debtor, doesn't really have any value. Transcript, Hearing on First Day Motions [Dkt. # 119, at 22: 5-6; and 68: 12-13].

5. The Debtors filed certain First Day Motions on the day after the Petition Date (collectively, the "***First Day Motions***"), and these First Day Motions sought relief aimed at preserving the going concern value of the bankruptcy estates and minimizing the adverse effects of the chapter 11 filing on the Debtors' businesses. The First Day Motions related to operational, as well as financial and financing issues. Both interim and final orders were entered by the Court granting the relief requested in the First Day Motions. The Court's granting these First Day Motions: (i) enabled the Debtor to obtain the necessary funds to continue operations; (ii) minimized the disruptive effect of the Bankruptcy Case; and (iii) permitted a court-sanctioned sales process for certain assets of the Debtor to be undertaken.

6. With respect to securing the services of professionals needed for the Bankruptcy Cases, the Court entered the following orders:

(a) *Final Order Authorizing the Debtor, Pursuant to 11 U.S.C. §§ 105(a) and 363(b), to (I) Retain Meadowlark Advisors LLC to Provide the Debtor with a Chief Restructuring Officer, and (II) Designate Jonathan J. Nash as Chief Restructuring Officer for the Debtor Nunc Pro Tunc to June 26, 2017* [Dkt. # 83] (the "***CRO Retention Order***");

(b) *Order Granting Application of Debtor to Employ Butler Snow LLP as its Bankruptcy Counsel and Disclosure of Compensation* [Dkt. # 86]; and

[2] *See In re Simply Wheelz LLC* Docket Nos. 326, 265, and 582 for filings relating to the sale of Purchased Assets (both Debtor Purchased Assets and FSNA Purchased Assets) to Catalyst. Because Catalyst did not elect to acquire all of the airport concession agreements that were owned by Simply Wheelz and FSNA, Simply Wheelz conducted secondary and tertiary sales processes and sold these remaining locations and all associated assets (except three locations) to Hertz, Avis, and Sixt [SW Dkt. ## 498, 601, 603, and 604].

(c) *Order Granting Debtor's Application to Employ Equity Partners HG LLC* [Dkt. # 89].

The entries of these Orders permitted the Debtor to retain competent restructuring professionals to oversee the administration of the bankruptcy case, and also to begin a court-supervised, structured sales process for certain assets of the Debtor.

7. One of the First Day Orders was the *Final Order (I) Authorizing the Debtor to Obtain Post-Petition Financing on a Secured and Super-Priority Basis Pursuant to 11 U.S.C. §§ 105, 364(c)(1), 364(c)(2), 364(c)(3) and 507(b); and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 and Pursuant to Miss. Bankr. L.R. 5005-1 and Miss. Bankr. L.R. 9013-1* [Dkt. # 94] (the "***Final DIP Order***") in which the Court approved the Debtor's obtaining a credit facility, (the "***DIP Facility***") by which the Debtor was authorized to borrow up to $250,000.00, subject to a subsequent funding, at the discretion of the DIP Lender of an additional $250,000.00 under the DIP Facility for the purposes of funding the operations of the Debtor's business, paying certain transaction fees and expenses, and other costs and expenses of administration of the Bankruptcy Case, all subject to, and in accordance with, the DIP Loan Documents and the Approved Budget, with the understanding that the Debtor will use its best efforts to have all such expenses paid by the Debtor's subsidiaries to the extent practicable.

8. As reflected in the CRO Retention Order [Dkt. # 83] and the Final DIP Order, the Board of Directors of the Debtor adopted procedures and protocol to identify and address conflicts of interests for directors in terms of: (i) who will receive notice of a meeting topic; (ii) who may participate in a meeting; and (iii) who may vote on a topic. These procedures and protocols permit the Board to function as an independent Board and to have disinterested directors acting on corporate matters.

9. At the final hearing on the First Day Motions, the Chief Restructuring Officer of the Debtor set forth his objectives for this chapter 11 case:

> Our overall objective is to maximize the value for -- in particular, for creditors, but for all stakeholders. And we aim to do that through two primary paths: One, the U-Save Holdings entities is a wholly owned subsidiary. We aim to sell that stock through a 363 sale, and maximize the value of that stock through a good sale process. And we aim to liquidate our claim against Macquarie and associates, and to do that in the best way that we're able to through the Chapter 11 process.

Transcript, Hearing on First Day Motions [Dkt. # 119, at 20: 14-22].

10. To oversee and administer the sale process by which the Debtor was selling its stock in U-Save Holdings, the Court entered its *Order Granting Debtor's Application to Employ Equity Partners HG LLC* [Dkt. # 89]. With respect to the sales process, Equity Partners, working with the CRO and the Debtor's professionals, developed certain sale procedures, which the Court approved in its *Order Granting Motion for an Order: (A) to Approve Sale Procedures in Connection with the Sale of All of the Debtors Stock in U-Save Holdings, Inc.; (B) Authorizing the Sale of Assets; (C) Scheduling an Auction to Conduct the Sale; (D) Scheduling a Sale Hearing for Approval of the Sale and Approving Notice Thereof; (E) Approving Notice of Certain Dates, Times, and Places and Proposed Notice Procedures; and (F) Granting Related Relief* [Dkt. # 147] ("***Sale Procedures Order***") entered on August 23, 2017, which set an Auction for September 26, 2017 and the Final Sale Hearing for the sale of the Subject Assets for the Debtor on September 27, 2017.

11. Equity Partners established a virtual data room for the sales process into which financial and operational data related to U-Save Holdings, U-Save Auto and the Subsidiaries was placed. Equity Partners, working with the Debtor's professionals, finalized confidentiality and non-disclosure agreements ("***NDAs***") to be executed by potential purchasers. Through the end of August 2017, Equity Partners had received executed confidentiality agreements from 18

prospective persons or entities, and each of those groups had been given access to the virtual data room being overseen by Equity Partners. Equity Partners followed up with each of these prospects answering questions and providing them with additional information as requested.

12. With respect to the claims against Macquarie, early in the bankruptcy case, the Debtor filed a *Motion for 2004 Examination of Bruce G. Donaldson* [Dkt. # 16]. One of the reasons for this Motion was to be able to evaluate better the claims of FSNA against Macquarie. [*See Schedules*, Dkt. # 64; Global Notes, Item 18. Schedule B74, at 6 of 27; Schedule B, Item 74, at 14 of 27]. The Chief Restructuring Officer testified earlier that he has "reason to believe those have substantial value for the debtors." He stated: "I don't know how much value that is, and I can't reasonably give you any sense of that until I have a better idea of the facts behind those claims. I can't get at those facts because Mr. Bruce Donaldson is not willing to testify, or to disclose what he knows about those claims without a court order." Transcript, Hearing on First Day Motions [Dkt. # 119, at 68:14 – 21].

13. The Macquarie Parties filed a *Motion to Continue Hearing on the Motion for Examination of Bruce G. Donaldson* [Dkt. # 29], which was granted by the Court in its *Order Granting Motion of Macquarie Parties (Macquarie Capital (USA), Inc., Michael John Silverton and Daniel Raymond Boland) for Continuance of Expedited Hearing on Motion of the Debtor for Order Directing the Examination of Bruce G. Donaldson Pursuant to Federal Rule of Bankruptcy Procedure 2004* [Dkt. # 61] in which the Court continued the Motion for Examination pending further Order of the Court.

14. On July 13, 2017, the Court entered its *Order Setting Hearing and Response Deadline on Motion of Debtor for Order Directing the Examination of Bruce G. Donaldson*

Pursuant to Bankruptcy Rule 2004 [Dkt. # 73] in which it set the Motion for Examination for hearing on August 30-31, 2017.

15. Subsequently, on September 5, 2017, the Court entered its *Order Setting Aside Order for Reconsideration of Denial of Motion for Continuance (Dkt. # 137)* [Dkt. # 178] in which it ordered that the trial on the *Motion of the Debtor for Order Directing the Examination of Bruce G. Donaldson Pursuant to Federal Rule of Bankruptcy Procedure 2004* and the *Response* of Macquarie [Dkt. #124] then set for Monday, September 25, 2017, and Tuesday, September 26, 2017, were cancelled.

16. On August 10, 2017, Macquarie Capital (USA) Inc., Daniel Raymond Boland, and Michael John Silverton (collectively, the "***Macquarie Parties***") filed a *Motion of the Macquarie Parties to Dismiss the Chapter 11 Case for Petition Having Been Filed without Proper Corporate Authority* [Dkt. # 121]. On August 31, 2017, Boketo LLC filed its *Joinder of Boketo LLC* [Dkt. # 168] to this Motion. On September 18, 2017, the Debtor filed its *Response and Objection* [Dkt. # 186]. The Macquarie Parties filed their *Reply* on September 27, 2017 [Dkt. 206], and the Debtor filed its *Response* [Dkt. # 221] on October 3, 2017.

17. The Court conducted a hearing on these pleadings on October 5, 2017, and it has requested the parties to brief the matter, with the final briefs due on November 8, 2017.

18. On Friday, September 22, 2017, LB-HSH-BUYER, LLC, a prospective bidder, filed its *Emergency Motion to Reset Auction* [Dkt. # 197], which the Court set for emergency hearing for Monday, September 25, 2017. At that hearing, the Court granted the motion and in its *Order* [Dkt. # 210] entered on September 28, 2017, cancelled and reset the Auction that previously had been noticed to be conducted on Tuesday, September 26, 2017, to a date to be established by further order of the Court. The Court also entered its *Agreed Order Continuing*

Deadline for Objections to Asset Sale [Dkt. # 212] in which the existing Objection Deadline to the sale was continued and the scheduled sale hearing was cancelled.

19. Until the Court rules on the Motion to Dismiss, the sale process for the sale of the U-Save Holdings stock cannot realistically move forward, and this sale is a key aspect of the Debtor's chapter 11 case. Further, until the Court rules on the Motion to Dismiss, the Debtor cannot take the examination of Bruce Donaldson and thereby permit the Chief Restructuring Officer to investigate further the claims of FSNA against Macquarie.

20. The Court entered an *Agreed Scheduling Order* on August 18, 2017 [Dkt. # 136] which required the Debtor to "file a disclosure statement containing adequate information as set forth in 11 U.S.C. § 1125 and a confirmable plan of reorganization on or before October 24, 2017, or seek an extension thereof."

21. Since the Petition Date, the Debtor, through its Chief Restructuring Officer and professionals, has addressed board governance issues; secured necessary funds for its operations and the administration of the bankruptcy case; paid its bills as they became due; retained professionals; begun the sales process for the sale of the U-Save Holdings stock; taken initial steps to evaluate its claim against Macquarie; sought to resolve disputed claims; attempted to resolve contingencies in this bankruptcy case; and begun to lay out the framework for a viable and confirmable plan, all while properly administering the bankruptcy case, including filing all schedules and reports required of it.

22. It is in the best interest of the Debtor and the bankruptcy estate for the Debtor to be able to address as many of these matters as practical before propounding a Plan and a Disclosure Statement, but the Court must first rule on the Motion to Dismiss. Accordingly, it has

not been practical for the Debtor to finalize and propose a Plan within the initial time period provided by the Bankruptcy Code.

III. RELIEF REQUESTED

23. For the reasons set forth herein, the Debtor seeks an extension of 120 days from the October 24, 2017 deadline for filing its Chapter 11 Plan and Disclosure Statement, as permitted by the Agreed Scheduling Order. The United States Trustee consents to this 120-day extension of the October 24, 2017 deadline.

24. Section 1121(b) of the Bankruptcy Code provides for an initial 120-day period after the Petition Date (the "***Plan Proposal Period***") within which the Debtor has the exclusive right to file a Plan. Section 1121(c)(3) further provides for an initial 180-day period after the Petition Date to solicit acceptances on such a Plan (the "***Plan Solicitation Period***"). The Debtor's Plan Proposal Period and the Plan Solicitation Period (collectively, the "***Exclusivity Periods***") are presently set to expire on March 5, 2014 and May 4, 2014, respectively.

25. Section 1121(d)(1) provides that the Court for cause may increase the 120-day period and 180-day period of Section 1121(b) and (c).

26. A request for an extension beyond the 120-day initial exclusivity period for the Plan Proposal Period must be filed on or before day 120, and a request for an extension of the Plan Solicitation Period must be filed on or before day 180. *See In re: Michigan Produce Haulers, Inc.*, 525 B.R. 408, 412 (Bankr. W.D. Mich. 2015)

27. The Debtor's request is timely made. Day 120 is October 24, 2017, and Day 180 is December 26, 2017 (with additional time for the weekend and the federal holiday).

28. "It was intended that at the outset of a Chapter 11 case a debtor should be given the unqualified opportunity to negotiate a settlement and propose a plan of reorganization without interference from creditors and other interests." *In re Texaco, Inc.*, 81 B.R. 806, 809

(Bankr. S.D.N.Y. 1988) (citing H.R.Rep. No. 595, 95th Cong., 2d Sess. 221–22, reprinted in 1978 U.S.C.C.A.N. 5787).

29. In adopting Section 1121(d)(1), "Congress explicitly sought to achieve two goals. It wanted to grant the debtor a reasonable time to obtain confirmation of a plan without the threat of a competing plan. And at the same time, Congress sought to ensure that a debtor would not use Chapter 11 as a mechanism through which to operate indefinitely without attempting to reorganize." *In re Clamp–All Corp.*, 233 B.R. 198, 207–08 (Bankr. D. Mass. 1999). "The exclusivity period gives the debtor the ability to stabilize its operations and the opportunity to retain control over the reorganization process. The adoption of a limited period of exclusivity also assures speed by motivating the debtor to be more fair and reasonable in its negotiations with creditors, because the debtor knows that the bargaining leverage of exclusivity will soon end." *Id.*, at 207.

30. The Bankruptcy Code does not define the word "cause" as used in section 1121(d)(1), but courts have developed a list of nine factors to consider in deciding whether to extend or terminate a debtor's statutory period of exclusivity:

1. the size and complexity of the case;
2. the necessity of 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 fact that the debtor is paying its 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 case;
8. whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
9. whether an unresolved contingency exists.

See, e.g., In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

31. The Chief Restructuring Officer of Debtor has been hindered in the administration of this bankruptcy case by the Motion to Dismiss filed by the Macquarie Parties, which was filed 45 days after the Petition Date and which was joined in by Boketo LLC 66 days after the Petition Date. The Macquarie Parties did not seek an expedited hearing on its Motion to Dismiss. Further, once Macquarie filed its Motion to Dismiss, it contended that nothing substantive (including the auction and sale hearing, the examination of Bruce Donaldson, and the retention of a CPA firm) could occur until after the Court ruled on its Motion to Dismiss. In light of the entry of the *Scheduling Order on Post-Trial Briefing Regarding Motion to Dismiss* [Dkt. # 236], it appears that there will be little or no substantive progress made in the case until at least after November 8, 2017, when the briefing is completed.

32. In light of the foregoing, the following factors favor an additional extension of exclusivity being granted to the Debtor: (i) the necessity of sufficient time to permit the debtor to negotiate a Chapter 11 Plan and prepare adequate information; (ii) the existence of good faith progress toward reorganization; (iii) the fact that the debtor is paying its bills as they become due; (iv) in light of the "buckets of assets" described by the Chief Restructuring Officer in earlier hearings, the debtor has demonstrated reasonable prospects for filing a viable plan; (v) the debtor has made progress in negotiations with some of its creditors; (vi) this is the first request for an extension of exclusivity which is being made within the initial 120-day period; (vii) the debtor is not seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and (viii) an unresolved contingency (a ruling on the Motion to Dismiss) exists which has prevented substantial progress being made in the bankruptcy case.

33. Accordingly, the Debtor seeks an extension of 120 days of the Plan Proposal Period, through and including February 21, 2018, during which the Debtor has the exclusive

right to file a Plan and Disclosure Statement and a corresponding extension of 120 days of the Plan Solicitation Period, through and including April 25, 2018, within which to solicit acceptances on such a Plan.

34. The Debtor does not seek this extension for purposes of delay, but rather, to allow the Debtor an opportunity to fully formulate and file its proposed Plan and Disclosure Statement.

35. The extension requested will not result in any undue prejudice to any creditor or other party-in-interest.

36. The request is made within the respective periods specified in section 1121 (b) and (c) of the Bankruptcy Code, and the requested extension of the Exclusivity Periods does not exceed the eighteen (18) month limitation of section 1121(d)(2)(A) of the Bankruptcy Code.

WHEREFORE, the Debtor respectfully requests that the Court: (A) amend the Agreed Scheduling Order to extend the October 24, 2017 deadline by 120 days; (B) extend the Plan Proposal Period through and including February 21, 2018 (a 120-day extension from the current deadline of October 24, 2017); (C) extend the Plan Solicitation Period through and including April 25, 2018 (a 120-day extension from the current deadline of December 26, 2017 (with additional time for the weekend and the federal holiday); and (D) will grant such other relief as to which the Debtor may be entitled.

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Dated: October 24, 2017.

Respectfully submitted,

FRANCHISE SERVICES OF NORTH AMERICA, INC.

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CERTIFICATE OF SERVICE

I certify that the foregoing pleading was filed electronically through the Court's ECF system and served electronically on all parties enlisted to receive service electronically.

Dated: October 24, 2017.

/s/ Stephen W. Rosenblatt
STEPHEN W. ROSENBLATT

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