BALLON STOLL BADER & NADLER, P.C.
729 Seventh Avenue
New York, NY 10019
Telephone: (212) 575-7900
Facsimile: (212) 764-5060
Vincent J. Roldan
vroldan@ballonstoll.com

Attorneys to the Debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
YOSI SAMRA, INC.	Case No. 17-12493
Debtor.	

DEBTOR'S THIRD MOTION REQUESTING ENTRY OF AN ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE AND SOLICIT ACCEPTANCES OF A PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d) FOR AN ADDITIONAL FORTY-FIVE (45) DAYS

Yosi Samra, Inc., as debtor and debtor-in possession (the "Debtor"), by and through its counsel Ballon Stoll Bader and Nadler, P.C., as and for request for entry of an order, substantially in the form annexed hereto as Exhibit "A" (the "Proposed Order"), pursuant to Section 1121(d) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, extending the Debtor's Exclusive Periods (defined herein) to file a chapter 11 plan of reorganization (the "Plan") and to solicit acceptances thereof by an additional forty-five (45) days, respectfully represents:

PRELIMINARY STATEMENT

Under section 1121(b) of the Bankruptcy Code, as extended by order of this Court dated February 20, 2018 [Docket No. 127], the period under which the Debtor has the exclusive right to file a Chapter 11 plan currently expires on April 6, 2018. By this Motion, on consent of the Official Committee of Unsecured Creditors, the Debtor seeks another 45 day extension of this period as well as the exclusive period to solicit acceptances of its Chapter 11 plan.

INTRODUCTION AND BACKGROUND

1. On September 5, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief in this Court pursuant to Chapter 11 of Title 11, United States Code (the "Bankruptcy Code"). Debtor remains in possession of its assets and continues management of its business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. A detailed description of the Debtor's business and the facts precipitating the filing of the Debtor's Chapter 11 proceeding is set forth in the Affidavit of Yosi Samra Pursuant to Local Bankruptcy Rule 1007-2 (the "Samra Affidavit") filed on the Petition Date. Those facts are incorporated herein by reference. No party has requested the appointment of a trustee or examiner in this Chapter 11 case. The U.S. Trustee appointed a three-member Official Committee of Unsecured Creditors (the "Committee") on September 27, 2017.

3. On December 28, 2017, the Court entered an order [Docket No. 109] extending the Debtor's exclusive period to file a Chapter 11 plan under section 1121(d) of the Bankruptcy Code to February 19, 2018.

4. Under the same order, the Court extended the Debtor's exclusive period to solicit acceptances for its Chapter 11 plan to April 18, 2018.

5. On February 20, 2018, the Court entered an order [Docket No. 127] extending the Debtor's exclusive period to file a Chapter 11 plan under section 1121(d) of the Bankruptcy Code to April 6, 2018.

6. Under the same order, the Court extended the Debtor's exclusive period to solicit acceptances for its Chapter 11 plan to June 4, 2018.

<u>RELIEF SOUGHT</u>

7. This Motion is made in support of the entry of the Proposed Order granting the Debtor an extension of its Exclusive Periods (defined herein) for a period of 45 days. The Debtor currently anticipates negotiating a plan of reorganization with its creditors which could be filed in April 2018.

8. Section 1121 of the Bankruptcy Code provides in relevant part:

> (a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.
>
> (b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.
>
> (c) Any party in interest, including the debtor, the trustee, a creditors' committee, equity security holders' committee, a creditor, and equity security holder, or any indenture trustee, may file a plan, if and only if –
>
> > (1) a trustee has been appointed under this chapter;
> >
> > (2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
> >
> > (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.
>
> (d) (1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
>
> (A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter;
>
> (B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121.

9. Thus, pursuant to 11 U.S.C. § 1121(b), the Debtor is afforded an initial one hundred and twenty (120) day period of exclusivity in which to file a Chapter 11 Plan (the "120-Day Exclusive Period") and an additional sixty (60) day period to solicit acceptances thereof (the "180-Day Exclusive Period" or, together with the 120-Day Exclusive Period, the "Exclusive Periods"). In this Chapter 11 Case, after receiving two extensions (both with the consent of the Committee), the Debtor's 120-Day Exclusive Period is set to expire on April 6, 2018 and its 180-Day Exclusive Period is set to expire on June 4, 2018.

10. By this Motion, the Debtor respectfully requests a 45-day extension of the 120-Day Exclusive Period through and including May 21, 2018 and a 45-day extension of the 180-Day Exclusive Period through and including July 19, 2018 without prejudice to its right to seek further requests for extensions of the Exclusive Periods as may be necessary and appropriate.

11. The Debtor respectfully submits that, as set forth below, ample cause exists to extend the Exclusive Periods and such extensions are in the best interests of the Debtor's estate.

BASIS FOR RELIEF

12. The determination of whether sufficient cause exists to grant an extension of the Exclusive Periods is committed to the sound discretion of bankruptcy courts and is to be based upon the facts and circumstances of each chapter 11 case. *See, e.g.*, *In re Ames Dept. Stores, Inc.*, 1991 WL 259036, *2 (S.D.N.Y. 1991); *In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987); *In re Gibson & Cushman Dredging*, 101 B.R. 405 (E.D.N.Y. 1989). The legislative history of section 1121(d) indicates that the Bankruptcy Court is given broad flexibility in making such determinations. *See* H.R. Rep. No. 95-595 (95th Cong. 1st Sess. 232 1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News, 5953, 6191; *Gibson & Cushman*

Dredging, 101 B.R. at 409 ("The cause standard referred to in Section 1121 has been referred to as a general standard that allows the Bankruptcy Court maximum flexibility to suit various types of reorganization proceedings.") (Internal quotations and citation omitted.)

13. While there are no specific statutory guidelines as to what circumstances justify an extension, courts have appropriately granted extensions of the section 1121(d) time periods in a wide variety of circumstances. The general rule is that the court must give the debtor a reasonable opportunity to negotiate with creditors. *7 Collier on Bankruptcy* &1121.06 at p. 1121-7 (15th Ed. 2002). Courts have found that an extension is necessary to provide such a "reasonable opportunity" in a wide range of cases where the debtor is proceeding diligently and in good faith but has simply not had sufficient time under the particular factual circumstances of the case to formulate a plan. *See, e.g., In re McLean Industries, Inc.*, 87 B.R. 830 (Bankr. S.D.N.Y. 1987); *Gaines v. Perkins*, 71 B.R. 294 (W.D. Tenn. 1987); *In re Pine Run Trust, Inc.*, 67 B.R. 432 (Bankr. E.D. Pa. 1986).

14. In determining what constitutes cause sufficient to warrant an extension of a debtor's exclusivity, courts have also looked to the following factors:

(i) size and complexity of the case;

(ii) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;

(iii) the existence of good faith progress toward reorganization;

(iv) the fact that the debtor is paying its bills as they become due;

(v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

(vi) whether the debtor has made progress in its negotiations with creditors;

(vii) the amount of time that has elapsed in the case;

(viii) whether the debtor is seeking to extend exclusivity in order to pressure creditors to submit to the debtor's reorganization demands;

(ix) the existence of an unresolved contingency.

See In re Adelphia Commc'n Corp., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *In re 221-06 Merrick Blvd. Assocs., LLC*, 2010 Bankr. LEXIS 4431 (Bankr. E.D.N.Y. Dec. 3, 2010).

15. When evaluating these factors, the goal is to determine whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. *See, e.g., In re McLean*, 87 B.R. at 833-34.

16. A finding that any of these factors exists may justify extending a debtor's exclusive periods. *See In re Express One Int'l*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (four factors relevant in determining whether cause exists to extend exclusivity); *In re Interco, Inc.*, 137 B.R. 999, 1001 (Bankr. E.D. Mo. 1992) (four factors showed that bondholders' committee failed to show cause to terminate debtors' exclusivity); *In re Texaco, Inc.*, 76 B.R. at 327 (cause existed to extent exclusivity based on size and complexity alone).

17. Also, while the foregoing factors are frequently cited, the court may consider any other factors which may be germane to the requested extension. Other cited factors include: (a) intransigence and continual litigation from interested parties; (b) the size and complexity of the case; (c) the debtor's progress in resolving issues to the estate; and (d) whether an extension of time will harm the debtor's creditors. *See In re Sletteland*, 260 B.R. 657, 670 (Bankr. S.D.N.Y. 2001); *In re Grand Traverse Development Co. Ltd. Partnership*, 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992); *In re Southwest Oil Co.*, 84 B.R. 448, 451-54 (Bankr. W.D. Tex. 1987); *Gibson & Cushman Dredging Corp.*, 101 B.R. at 409-10. In this case, ample "cause" exists for the requested extension of the Exclusive Periods.

A. <u>The Debtor Has Not Yet Had Sufficient Time to Negotiate a Plan of Reorganization</u>

18. The Debtor has spent the early part of the bankruptcy case stabilizing its business through negotiations with its warehouse (Seko) and DIP lender (Sallyport). Then, the Debtor spent significant time preparing operating reports and reconciling records that were poorly kept by previous accountants. This reconciliation process delayed negotiations with the Committee regarding the framework of an exit strategy.

19. Throughout this case, however, the Debtor has been in communications with the Committee regarding exit strategies and maximizing value. The Debtor and Committee have exchanged offers and term sheets, but are not yet in agreement regarding the structure of a Chapter 11 plan. The Debtor hopes that with this third extension, it will be able to complete its discussions with the Committee. The Committee has agreed to the instant motion, as well as both prior extensions.

B. <u>The Debtor is Making Good Faith Progress Toward Reorganization</u>

20. Extension of a debtor's exclusive periods is also justified by a debtor's progress in generally resolving issues which arise out of the ordinary and necessary administration of a chapter 11 case. *See In re McLean Indus., Inc.,* 87 B.R. at 833; *In re Public Serv. Co. of New Hampshire,* 88 B.R. 521, 535-6 (Bankr. D.N.H. 1988).

21. Here, the Debtor is making progress towards a reorganization. The claims bar date has passed, and it is analyzing claims as well as objections to those claims. In addition, the Debtor is open to any possible exit strategy. It has been discussing possible transactions with lenders and investors.

C. <u>The Debtor Has Been Paying its Bills as They Become Due in the Ordinary Course of its Business</u>

22. Courts considering an extension of exclusivity may also assess a debtor's liquidity. *See In re Texaco Inc.*, 76 B.R. at 322. Here, the Debtor has sufficient liquidity and is generally paying its bills as they come due.

D. <u>A Minimal Amount of Time Has Elapsed in This Case</u>

23. This Chapter 11 Case has only been pending for approximately seven months. The Debtor respectfully submits that this is only a minimal amount of time.

E. <u>The Debtor Is Not Using Exclusivity to Pressure Creditors</u>

24. Courts have denied extensions of exclusive periods where plan negotiations among parties-in-interest have broken down, and the continuation of exclusivity would merely give the debtor unfair bargaining leverage over other parties-in-interest. *See In re Texaco Inc.*, 76 B.R. at 345. This is not the case here. The Debtor has met with the Committee several times—twice in person and multiple times via telephone conference. This should demonstrate the Debtor's good faith negotiations, and that the Debtor is not in any way using the exclusive periods unfairly to pressure any creditor. The Debtor has made every effort to deal fairly with all creditors and stakeholders in this Chapter 11 Case. The Debtor's request for an extension of the Exclusive Periods is not a negotiation tactic, but instead, merely a reflection that the Chapter 11 Case is still not yet ripe for the formulation and confirmation of a viable Plan. Further, the Debtor remains hopeful that prior to the expiration of the extended Exclusive Periods, it will be positioned to file a consensual plan of reorganization.

25. Accordingly, the Debtor submits that cause exists for the requested extensions and that the entry of the Proposed Order increasing the Exclusive Periods is reasonable and is in the best interest of the Debtor and its estate. Therefore, the Debtor requests entry of the Proposed

Order extending the Exclusive Periods to May 21, 2018 and July 19, 2018, respectively, without prejudice to seek further extensions of the Exclusive Periods.

NOTICE

26. Notice of this Motion will be served by mail on (i) the Office of the United States Trustee for the Southern District of New York, (ii) all parties having requested notices in the case, (iii) the Debtor's secured creditors, and (iv) counsel to the Official Committee of unsecured creditors. The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

27. No prior request for the relief sought in this Motion has been made to this or any other court in connection with this chapter 11 case, except for the two extensions (referenced above) that were previously sought and granted.

WHEREFORE, the Debtor respectfully requests that the Court: (a) enter an Order substantially in the form attached hereto as Exhibit A granting the relief requested herein; and (b) grant such other and further relief to the Debtor as the Court may deem proper.

Dated: New York, New York
March 20, 2018

Respectfully submitted,

BALLON STOLL BADER & NADLER, P.C.

By: ___/s/ Vincent J. Roldan_____________
Vincent J. Roldan

729 Seventh Avenue – 17th Floor
New York, NY 10019
212.575-7900
Fax 212.764-5060
www.ballonstoll.com

Attorneys for Debtor and Debtor-in-Possession

EXHIBIT "A"

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
--x

In re:	Chapter 11
YOSI SAMRA, INC.	Case No. 17-12493
Debtor.	

--x

ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE AND SOLICIT ACCEPTANCES OF A PLAN OF REORGANIZATION <u>PURSUANT TO 11 U.S.C. § 1121(d) FOR A PERIOD OF 45 DAYS EACH</u>

Upon the motion (the "Motion"), dated March 20, 2018 of Yosi Samra, Inc. (the "Debtor"), by its attorneys, for an order pursuant to 11 U.S.C. § 1121(d), extending the 120-day exclusive period (the "120-Day Exclusive Period") to file a chapter 11 plan of reorganization (the "Plan") and the 180-day exclusive period (the "180-Day Exclusive Period") to obtain acceptances thereof for a period of forty-five (45) days each; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and the Court having found that the Debtor provided adequate and appropriate notice of the Motion; and that no other or further notice is required; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that pursuant to section 1121(d) of the Bankruptcy Code, the 120-Day Exclusive Period[1] is extended to and including May 21, 2018 and it is further

ORDERED that pursuant to section 1121(d) of the Bankruptcy Code, the 180-Day Exclusive Period is extended to and including July 19, 2018; and it is further

ORDERED that other than the Debtor, no other entity may file a chapter 11 plan during the 120-day Exclusive Period or solicit acceptances during the 180-day Exclusive Period and any extensions of the foregoing periods; and it is further

ORDERED that entry of this Order is without prejudice to the Debtor's right to make further applications for additional extensions of the 120-Day Exclusive Period and 180-Day Exclusive Period.

Dated: New York, New York
April __, 2018

____
United States Bankruptcy Judge

[1] Capitalized terms not defined herein shall have the meaning ascribed in the Motion.