

1 Tara J. Schleicher, OSB #954021  
Margot D. Seitz, OSB #075982  
2 Farleigh Wada Witt  
121 SW Morrison Street, Suite 600  
3 Portland, Oregon 97204-3136  
Telephone: (503) 228-6044  
4 TSchleicher@fwwlaw.com  
MSeitz@fwwlaw.com

5 Attorneys for Debtor Ameriflex Engineering, LLC  
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7

8 IN THE UNITED STATES BANKRUPTCY COURT  
9 FOR THE DISTRICT OF OREGON

10 In re

11 Ameriflex Engineering, LLC,  
12 Debtor.

Case No. 17-60837-tmr11

DEBTOR'S MOTION TO EXTEND (1)  
DEADLINE TO FILE PLAN AND  
DISCLOSURE STATEMENT PURSUANT  
TO 11 U.S.C. § 1121(e)(2); (2) DEADLINE  
TO OBTAIN CONFIRMATION OF A PLAN  
PURSUANT TO 11 U.S.C. § 1129(e); AND (3)  
EXCLUSIVITY PERIOD

**Expedited Consideration Requested**

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17 Ameriflex Engineering, LLC, Debtor ("Debtor" or "Ameriflex"), hereby moves  
18 this Court for an order extending (1) the deadline to file a plan and disclosure statement pursuant  
19 to 11 U.S.C. § 1121(e)(2); (2) the deadline to obtain confirmation of a plan pursuant to 11 U.S.C.  
20 § 1129(e) and (3) the exclusivity period. Counsel for the Debtor conferred with all active  
21 creditors/parties in this case and have determined that they do not object. Specifically, counsel  
22 for the Debtor has conferred with counsel for the United States Trustee, Michael Zoller, SR, LLC  
23 and Pacific Diamond & Precious Metals, and they do not object to the requested extensions. In  
24 support of this Motion, the Debtor states as follows.

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1 **I. Introduction/Background.**

2 Pursuant to 11 U.S.C. § 1121(e)(2), the current deadline for the Debtor to file a  
3 plan and disclosure statement is January 16, 2018—300 days after entry of the Order for Relief.  
4 The Debtor’s exclusivity period is set to expire on the same day, January 16, 2018. These  
5 current deadlines do not provide the Debtor with sufficient time to file a plan of reorganization  
6 because the parties and the Court have recognized that it makes more sense and would be more  
7 efficient for the Debtor to file its plan after the Court issues its ruling on the pending summary  
8 judgment motions in the *Ameriflex v. Michael Zoller* adversary proceeding (Adv. Pro. Case No.  
9 17-06024-tmr) (the “Ruling”). The Court heard oral argument on the parties’ cross motions for  
10 summary judgment on August 30, 2017 and took supplemental briefing through September 29,  
11 2017. The matter is currently under advisement.

12 On September 29, 2017, and pursuant to LBR 3017.1-1(a), Ameriflex circulated a  
13 draft Disclosure Statement and Plan to all active creditors/parties in this case. Counsel for  
14 Ameriflex subsequently conferred with multiple parties to resolve various objections to the  
15 Disclosure statement before seeking conditional approval from the court. However, the terms of  
16 the Debtor’s Plan and Disclosure Statement may be significantly altered by the Ruling and  
17 cannot be finalized until the Court’s decision is given. As detailed below, the Court had readily  
18 acknowledged this constraint on multiple occasions. Given this constraint, the Court has also  
19 extended the Debtor’s exclusivity period several times. The procedural history of those  
20 extensions are outlined in detail in Debtor’s Motion to Further Extend Exclusivity Period  
21 (Docket No. 222).

22 **II. Legal Standard.**

23 Pursuant to 11 USC 1121(e)(2), a small business debtor must file a plan and  
24 disclosure statement “not later than 300 days after the date of the order for relief.” Here, that  
25 deadline runs on January 16, 2018. That deadline, and the Debtor’s exclusivity period may be  
26 extended by the court. 11 USC 1121(e)(3). Code section 1121(e)(3) provides that the such an

1 extension may be granted if --

2 (A) the debtor, after providing notice to parties in interest  
3 (including the United States trustee), demonstrates by a  
4 preponderance of the evidence that it is more likely than not that  
5 the court will confirm a plan within a reasonable period of time;

6 (B) a new deadline is imposed at the time the extension is granted;  
7 and

8 (C) the order extending time is signed before the existing deadline  
9 has expired.

10 Similarly, the above provision applies to the extension of the 45 day plan  
11 confirmation deadline contained in 11 USC 1129(e). That Code Section provides that, in a small  
12 business case, the court “shall confirm a plan that complies with the applicable provisions of this  
13 title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is  
14 filed unless the time for confirmation is extended in accordance with 1121(e)(3).” In other  
15 words, once the Debtor files a plan in this case, a decision must be issued within 45 days unless  
16 the deadline is extended.

17 As discussed below, in this case there is good cause to extend (1) the deadline to  
18 file a plan and disclosure statement pursuant to 11 U.S.C. § 1121(e)(2); (2) the exclusivity  
19 period, and (3) the deadline to obtain confirmation of a plan pursuant to 11 U.S.C. § 1129(e).

20 **III. Discussion.**

21 The Debtor is ready, able and willing to finalize and file its Disclosure Statement  
22 and Plan. The Debtor has already prepared and circulated a draft. The Debtor simply cannot do  
23 so until the Court has issued its Ruling. The Court and the parties acknowledge that fact and the  
24 Court has accordingly held on two occasions that “[n]o plan shall be filed” in this case until the  
25 Court issues its Ruling. See, Minute Order, Docket No. 215; Order Granting Debtor’s Motion to  
26 Further Extend Exclusivity Period, Docket No. 229 (reiterating the court’s prior ruling that no  
plan shall be filed until the Ruling is issued.)

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1           Once the Ruling is issued, the Debtor will promptly: (1) update its Plan and  
2 Disclosure Statement, (2) circulate drafts to creditors pursuant to LBR 3017.1-1(a), and (3)  
3 confer with creditors regarding any disclosure statement objections. Only after those steps are  
4 taken can the Debtor file and seek conditional approval of the disclosure statement. Once  
5 approved, the Debtor can file its plan and ask the court to set a confirmation hearing and ballot  
6 deadline. The current January 16, 2018 deadline (for both plan filing and exclusivity) does not  
7 provide the Debtor with sufficient time since the Ruling has not been issued. In line with the  
8 Court’s prior ruling regarding both the exclusivity period and adversary proceeding Ruling, the  
9 deadline to file a plan and disclosure statement and the exclusivity period should be further  
10 extended for thirty (30) days after a Ruling is made in the above-referenced adversary  
11 proceeding. That would provide sufficient time for the Debtor to take the above steps.

12           Additionally, the deadline for Debtor to obtain confirmation of a plan pursuant to  
13 11 U.S.C. § 1129(e) should be extended from forty-five (45) days after the plan is filed until at  
14 least sixty (60) days after a plan is filed. It is anticipated that Michael Zoller (“Zoller”) will  
15 object to the plan and a contested confirmation hearing will be necessary. Once the Court  
16 approves a disclosure statement and sets a confirmation hearing, the Debtor must provide a  
17 minimum of 28 days’ notice to creditors of the voting deadline, deadline to object to the plan,  
18 and confirmation hearing date. See BR 3017(c) (incorporating BR 2002(b) and providing notice  
19 requirements for plan confirmation); BR 3018 (court must affix time for voting). Once  
20 objections are filed at the end of that period of time, time will be needed for the Debtor to  
21 prepare and file response briefs. Additional filings will also likely be necessary such as witness  
22 and exhibit lists. A 45 day time frame is simply unrealistic. Judge Hercher recently found that a  
23 minimum of 49 days are required. *In re Champion Excavation Inc.*, US Bankruptcy Court for  
24 the District of Oregon, Case No. 17-61839-dwh11. A 60-day time frame is conservative but  
25 realistic.

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1           There is no question that if the Court grants the requested extension it is “more  
2 likely than not that the court will confirm a plan within a reasonable period of time.” 11 U.S.C.  
3 § 1121(e)(3). The Debtor has already prepared a draft plan and disclosure statement and is  
4 prepared to promptly make any modifications necessary after the Ruling is issued and take all  
5 necessary steps toward plan confirmation. Moreover, the Debtor’s proposed Plan meets the  
6 requirements of 1129(b) for plan confirmation. The Debtor is prepared to propose a plan in good  
7 faith that: (1) complies with the applicable provisions of the bankruptcy code; (2) includes  
8 payments approved by or subject to the court’s approval, as reasonable; (3) discloses the identity  
9 and affiliations of any individuals proposed to serve as directors, officers, or voting trustees of  
10 the debtor after confirmation consistent with the interests of creditors and equity security holders  
11 and with public policy; (4) provides that each holder of a claim or interest of a class has either (i)  
12 accepted the plan, or (ii) will retain under the plan a value, as of the effective date, that is not less  
13 than the amount that the holder would receive if the debtor were liquidated under chapter 7; (5)  
14 appropriately classifies and treats priority administrative claims under 507(a)(2) in a manner  
15 agreed to by its professionals (Debtor does not believe any creditors exist with priority claims  
16 under 507(a)(1), (3)-(8)), and (6) provides for timely payment of all court and U.S. Trustee fees.  
17 11 USC 1129(a)(1)-(9), (12).

18           The Debtor has received some positive feedback from creditors and believes that  
19 at least one class of impaired claims will vote in favor of its plan (not including acceptance of the  
20 plan by insiders). Additionally, it is very unlikely that confirmation of the Debtor’s plan will be  
21 followed by a liquidation and the creditors in this case will receive more in the plan than in a  
22 liquidation. The Debtor’s financial advisor has prepared a liquidation analysis that further  
23 supports this conclusion. Although the Debtor’s business continues to be affected by the  
24 bankruptcy filing, its monthly reports demonstrate that its business continues to generate net  
25 income that can be used over the plan period to make substantial payments to its creditors. *Id.*,  
26 *see, e.g.*, Docket Nos. 214, 224, and 232. Lastly, the Debtor is prepared to file a plan that does

1 not unfairly discriminate and is fair and equitable with respect to each class of claims under 11  
2 USC (b)(1). For all of the above reasons, it is much more likely than not that the court will  
3 confirm a plan within a reasonable period of time if the requested extensions are granted.

4 The Debtor is notifying creditors (*i.e.*, parties requesting special notice and the 20  
5 largest unsecured creditors) of this Motion by not only providing standard service, but also  
6 providing expedited notice by email and/or fax as set out on the Certificate of Service filed  
7 herewith.

8 WHEREFORE, the Debtor respectfully requests for an extension of the deadline  
9 to file a plan and disclosure statement pursuant to 11 U.S.C. § 1121(e)(2) and the exclusivity  
10 period until thirty (30) days after a Ruling is made in above referenced adversary proceeding and  
11 extending the deadline for Debtor to obtain confirmation of the plan until sixty (60) days after  
12 the plan is filed.

13 Dated: January 4, 2018.

14 FARLEIGH WADA WITT

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16 By: /s/ Margot D. Seitz  
17 Margot D. Seitz, OSB #075982  
18 mseitz@fwwlaw.com  
19 Tara J. Schleicher, OSB #954021  
20 tschleicher@fwwlaw.com  
21 Of Attorneys for Debtor Ameriflex  
22 Engineering, LLC  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  
Ameriflex Engineering, LLC,  
Debtor.

Case No. 17-60837-tmr11

[PROPOSED] ORDER GRANTING  
DEBTOR'S MOTION TO EXTEND (1)  
DEADLINE TO FILE PLAN AND  
DISCLOSURE STATEMENT PURSUANT  
TO 11 U.S.C. § 1121(e)(2); (2) DEADLINE  
TO OBTAIN CONFIRMATION OF A PLAN  
PURSUANT TO 11 U.S.C. § 1129(e); AND (3)  
EXCLUSIVITY PERIOD

This matter came before the Court on Debtor's Motion to Extend (1) Deadline to File Plan and Disclosure Statement Pursuant to 11 U.S.C. § 1121(e)(2); Deadline to Obtain Confirmation of a Plan Pursuant to 11 U.S.C. § 1129(e); and (3) Exclusivity Period (the "Motion"). The Court, having considered the pleadings and being otherwise fully advised in the premises, it is hereby

ORDERED that:

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 4, 2018, the foregoing **DEBTOR’S MOTION**  
3 **TO EXTEND DEADLINE TO FILE PLAN AND DISCLOSURE STATEMENT; (2)**  
4 **DEADLINE TO OBTAIN CONFIRMATION OF A PLAN; AND (3) EXCLUSIVITY**  
5 **PERIOD and PROPOSED ORDER** was served on the parties indicated as “ECF” on the  
6 attached List of Interested Parties by electronic means through the Court’s CM/ECF.

7 In addition, I certify that on January 4, 2018, the parties indicated as “Non-ECF”  
8 on the attached List of Interested Parties were served by email and/or fax and first class mail in a  
9 sealed, first-class postage prepaid envelope, addressed to each party’s last known address and  
10 deposited in the US mail at Portland, Oregon on the date set forth above.

11 Dated: January 4, 2018.

12 FARLEIGH WADA WITT

13  
14 By: /s/ Margot D. Seitz  
15 Margot D. Seitz  
16 mseitz@fwwlaw.com  
17 Tara J. Schleicher, OSB #954021  
18 tschleicher@fwwlaw.com  
19 Of Attorneys for Debtor  
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1 **LIST OF INTERESTED PARTIES**

2 **In re Ameriflex Engineering, LLC**  
3 **US Bankruptcy Court Case No. 17-60837-tmr11**

4 **ECF PARTICIPANTS**

- 5 • MICHELE SABO ASSAYAG orefilings@amlegalgroup.com
- 6 • KEITH Y BOYD ecf@boydlegal.net, arnold@boydlegal.net
- 7 • BRADLEY S COPELAND bcopeiland@agsprp.com, [bdavis@agsprp.com](mailto:bdavis@agsprp.com)
- 8 • CONDE T COX conde@lawofficeofcondecocox.com, trish@lawofficeofcondecocox.com
- 9 • THOMAS A HUNTSBERGER tom@tahpc.com, laurie@tahpc.com
- 10 • LOREN S SCOTT [ecf@scott-law-group.com](mailto:ecf@scott-law-group.com)
- 11 • TIMOTHY A SOLOMON tsolomon@llg-llc.com, justin-leonard-leonard-law-group-llc-5265@ecf.pacerpro.com
- 12 • US Trustee, Eugene USTPRegion18.EG.ECF@usdoj.gov

13 **NON-ECF PARTICIPANTS**

14 **SECURED CREDITORS**

15 Bank of the Cascades  
 16 Attn: Andrew Gerlicher, President  
 17 PO Box 970  
 18 Bend, OR 97709-0970  
 19 [agerlicher@botc.com](mailto:agerlicher@botc.com)

20 CamCo LLC  
 21 Attn: Phillip Cam, Registered Agent  
 22 3770 Devils Garden Road  
 23 Medford, OR 97504  
 24 [pacificdiamond@aol.com](mailto:pacificdiamond@aol.com)

25 **TOP 20 UNSECURED CREDITORS**

26 Northwest Applied Marine  
 27 347 W 2<sup>nd</sup> Ave. Ste. A  
 28 Coleville, WA 99114  
 29 [bob@nwappliedmarine.com](mailto:bob@nwappliedmarine.com)

30 Ken-Mac Metals  
 31 (ABN of Thyssenkrupp Materials NA,  
 32 Inc.), Registered Agent  
 33 50 West Broad Street, Ste 1330  
 34 Columbus, OH 43215  
 35 248-233-5699 Fax

36 Consolidated Electrical Distributors  
 37 CT Corporation Systems,  
 38 Registered Agent  
 39 388 State Street, Ste. 420  
 40 Salem, OR 97301  
 41 541-665-2339 Fax

42 Ryerson Metals  
 43 c/o Ryerson Holding Corporation  
 44 The Corporation Trust Company  
 45 Corporation Trust Center  
 46 1209 Orange Street  
 47 Wilmington, DE 19801  
 48 763-783-3472 Fax

49 B&H Upholstery Supply  
 50 Attn: Margaret Howard,  
 51 Registered Agent  
 52 775 Wilson Street  
 53 Eugene, OR 97402  
 54 541-484-5203 Fax

55 Timber Products Company  
 56 (ABN of Timber Products Co. Limited  
 57 Partnership)  
 58 Erik Vos, Registered Agent  
 59 PO Box 269  
 60 Springfield, OR 97477  
 61 [evos@timberproducts.com](mailto:evos@timberproducts.com)

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BRP US Inc.  
c/o Joel Tremblay, Legal Dept.  
726 St-Joseph St.  
Valcourt, QC  
CANADA J0E2L0  
1.450.532.5130 Fax

Pacific Metal Company  
Attn: Lou Rice  
10700 SW Manhasset Dr.  
Tualatin, OR 97062  
[lrice@pacificmetal.com](mailto:lrice@pacificmetal.com)

Industrial Source  
(ABN of Eugene Welders Supply Co.)  
Attn: Robert G. Laing,  
Registered Agent  
1574 W 6<sup>th</sup> Avenue  
Eugene, OR 97402  
541-242-6167 Fax

SASCO Fastners  
(ABN of SASCO Fasteners)  
Attn: James L. Grantland Jr.,  
Registered Agent  
1818 E McAndrews Rd  
Medford, OR 97504  
541-779-3304 Fax

AM Equipment  
(ABN of Albany Magneto  
Equipment, Inc.)  
SG Corporate Services, LLC,  
Registered Agent  
250 Church St., Ste. 200  
Salem, OR 97301  
541-327-3480 Fax

Fisheries Supplies Inc.  
Carl F. Sutter, Registered Agent  
1900 N Northlake Way, Ste. 10  
Seattle, WA 98103  
206-634-4600 Fax

Automotive Paint Specialties  
(ABN of Wesco Group, Inc.)  
Attn: Billy Taylor, Registered Agent  
95 West Elm  
Hermiston, OR 97838  
541-389-6069 Fax

Rogue Systems, Inc.  
Attn: William E. McDonald,  
Registered Agent  
147 West Hills Dr  
Grants Pass, OR 97526  
541-226-6800 Phone

Springfield Marine  
Carnahan, Caroline, Registered Agent  
1093 N Cynthia Dr., Ste 1  
Nixa, MO 65714  
417-725-2864 Fax

Foster Denman  
PO Box 1667  
Medford, OR 97501  
[jshean@fosterdenman.com](mailto:jshean@fosterdenman.com)

US Distributing  
7750 NE 17<sup>th</sup> Ave.  
Portland, OR 97211  
503-281-2127 Fax

T-H Marine  
200 Finney Drive  
Huntsville, AL 35824  
256-772-7135 Fax

**ADDITIONAL PARTIES SERVED**

R. Kim Short, President  
R K Short & Associates, Inc.  
975 Oak Street, Suite 700  
Eugene, OR 97401  
[rkshort@rkshort.com](mailto:rkshort@rkshort.com)

Oregon Dept of Revenue  
ODR Bkcy  
955 Center NE #353  
Salem OR 97301-2555  
*By First Class Mail*

Internal Revenue Service  
IRS  
PO Box 7346  
Philadelphia PA 19101-7346  
*By First Class Mail*