

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:	§	Chapter 11
	§	
CROSSROADS SYSTEMS, INC.	§	Case No. 17-51926
	§	
Debtor.	§	
	§	

**DEBTOR’S EMERGENCY MOTION FOR AN ORDER (I) AUTHORIZING
THE MAILING OF NOTICES, (II) ESTABLISHING A BAR DATE FOR FILING
PROOFS OF CLAIM, (III) ESTABLISHING RAMIFICATIONS FOR FAILURE
TO TIMELY FILE CLAIMS, (IV) APPROVING CONSOLIDATED NOTICE OF
(A) CASE COMMENCEMENT AND (B) BAR DATE, AND
(V) APPROVING NOTICE PROCEDURES**

Crossroads Systems, Inc., a Delaware corporation, as debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”), files this *Debtor’s Emergency Motion for Order (I) Authorizing the Mailing of Notices, (II) Establishing a Bar Date for Filing Proofs of Claim, (III) Establishing Ramifications for Failure to Timely File Claims; (IV) Approving Consolidated Notice of (A) Case Commencement and (B) Bar Date, and (V) Approving Notice Procedures* (the “Motion”) and in support thereof, respectfully represents as follows:

Jurisdiction and Venue

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

Background

2. To preserve the value of its assets and restructure its financial affairs, on August 13, 2017 (the “Petition Date”), the Debtor commenced the above captioned case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States

Code (the “Bankruptcy Code”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case, and no committees have been appointed or designated.

3. Concurrently with the commencement of the Chapter 11 Case, the Debtor is filing its *Prepackaged Plan of Reorganization for Crossroads Systems, Inc. Under Chapter 11 of the United States Bankruptcy Code* (the “Prepackaged Plan”)¹ and *Disclosure Statement Under 11 U.S.C. § 1125 in Support of the Prepackaged Plan of Reorganization for Crossroads Systems, Inc. Under Chapter 11 of the United States Bankruptcy Code* (the “Disclosure Statement”). Only Preferred Interests (Class 5) are impaired under the Prepackaged Plan. Therefore, only holders of Preferred Interests are entitled to vote. All other classes of claims and interests are unimpaired, and therefore, not entitled to vote and are deemed to have accepted the Prepackaged Plan. Solicitation on the Prepackaged Plan began prior to the filing of the Chapter 11 Case, and, prior to the Petition Date, the Debtor had received acceptances to the Prepackaged Plan from holders of more than two-thirds of equity interests in the only class impaired by the Prepackaged Plan. The Debtor is requesting that the Bankruptcy Court set a date for a hearing to determine whether the requirements of confirmation of the Prepackaged Plan have been satisfied within thirty-two (32) days of the Petition Date.

4. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor’s Chapter 11 Case is set forth in greater detail in the *Statement of Background Information and Declaration of Jennifer Crane Chief Financial Officer of Crossroads Systems, Inc., in Support of Debtor’s Chapter 11 Petition and*

¹ Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Prepackaged Plan.

First Day Motions (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference.

Relief Requested

5. The Debtor seeks the entry of an order under Bankruptcy Code § 105(a): (i) authorizing the mailing of notices; (ii) establishing a bar date to file proofs of claims; (iii) establishing ramifications for the failure to comply with the bar date; (iv) approving a consolidated notice of (a) case commencement, (b) the bar date, and (c) trading restriction order; and (v) approving notice procedures for this Chapter 11 Case.

Basis for Relief Requested

A. Mailing of Notices

6. Pursuant to 28 U.S.C. § 156(c), the Court is empowered to use outside facilities or services to provide notices and other administrative information to parties-in-interest when the Debtor pays the costs out of the estate’s assets. Prior to the Petition Date, the Debtor prepared a comprehensive list of creditors and parties-in-interest (the “Mailing Matrix”). The Debtor proposes that, pursuant to Bankruptcy Code § 342(a) and Federal Rules of Bankruptcy Procedure 2002(a) and (f), Eric Terry Law, PLLC (“Terry Law”), proposed counsel to the Debtor, or such copy service as it may select, will mail the notice of commencement of the Chapter 11 Case to the parties identified on the Mailing Matrix. The Debtor will make an electronic copy of the notice of commencement available at www.crossroads.com.

B. The Bar Date

7. Pursuant to Bankruptcy Rule 3003(c)(3), the Debtor requests that the Court establish a date by which proofs of claim or interest must be filed or be forever barred (the “Bar Date”). The Debtor requests that (i) the Bar Date for all creditors be established as September

12, 2017, which is twenty-four (24) days after the Petition Date, and (ii) the Bar Date be set forth on the consolidated notice of commencement of case and Bar Date that will be served on all creditors and parties-in-interest in the Chapter 11 Case.

C. Special Claims

8. The Bar Date should apply to all known and unknown creditors, subject to the following exceptions:

a. Non-Debtor Parties to Rejected Executory Contracts or Unexpired Leases.

Except as provided by separate Order including an Order granting Debtor's Motion for an Order (i) Authorizing the Debtor to Reject Warrant/Option Agreements and (ii) Estimating Rejection Claims, the Court should establish the later of either (1) the Bar Date, (2) the Rejection Claim Bar Date identified in the Prepackaged Plan, or (3) the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of any order approving the rejection of an executory contract or lease, as the bar date for filing claims arising out of the rejection of an executory contract or unexpired lease.

b. Entities Asserting Claims Arising from the Recovery of a Voidable

Transfer. The Court should establish the later of either (1) the Bar Date, or (2) the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of any order approving the avoidance of the transfer, as the bar date for filing claims arising out of a voidable transfer.

c. Entities Asserting Claims Arising from the Assessment of Certain Taxes.

The Court should establish the later of either (1) the Bar Date, or (2) the first business day that is at least thirty (30) calendar days after the date the relevant tax claim arises, as the bar date for filing claims arising from the assessment of certain taxes described in Bankruptcy Code § 502(i).

d. Governmental Units. Pursuant to Bankruptcy Code § 502(b)(9), the bar

date for filing proofs of claim by governmental units (as defined in Bankruptcy Code § 101(27)) should be established as February 12, 2018, which is the first business day that is 180 days after the Petition Date.

e. Creditors Holding Claims Reduced by Amendments to the Debtor's

Schedules. If an amendment to the Schedules reduces the liquidated amount of a scheduled claim, or reclassifies a scheduled, undisputed, liquidated, non-contingent claim as disputed, unliquidated, or contingent, the affected claimant should be required to file a proof of claim on the later of (1) the Bar Date, or (2) the first business day that is at least thirty (30) calendar days after the mailing of the notice of such amendment in accordance with Bankruptcy Rule 1009, but only to the extent such proof of claim does not exceed the amount scheduled for such claim before the amendment. Creditors should not be entitled to an extension of the Bar Date if a Schedule amendment increases the scheduled amount of an undisputed, liquidated, non-contingent claim.

f. Holders of Administrative Claims. Neither the Bar Date nor any other

deadline proposed in this Motion should apply to requests for payment of administrative expenses arising in the Debtor's Chapter 11 Case under Bankruptcy Code §§ 503, 507(a)(1), 507(b), 330(a), 331 or 364. The Administrative Claim Bar Date is set forth in the Prepackaged Plan and will be included in any confirmation order entered in the Chapter 11 Case.

g. Holders of Equity Securities. Bankruptcy Rule 3003(b)(2) provides that it is not necessary for an equity security holder to file a proof of interest based solely upon such interest. Accordingly, the Order establishing the Bar Date should specifically provide that holders of equity securities of the Debtor need not file a proof of interest. However, any equity holder asserting any rights as a creditor of the Debtor's estate shall be required to file a proof of claim against the Debtor's estate on or before the Bar Date.

9. The following persons or entities should **not** be required to file a proof of claim on or before the Bar Date:

a. any person or entity that has already properly filed, with the Clerk of the United States Bankruptcy Court for the Western District of Texas (the "Clerk") a proof of claim against the Debtor using a claim form that substantially conforms to Official Form 410;

b. any person or entity whose claim has been paid by the Debtor; and

c. any professionals whose retention in the Chapter 11 Case have been approved by the Court.

D. Proposed Procedures for Filing Proofs of Claim

10. The Order establishing the Bar Date should set forth the following procedural requirements with respect to the filing of proofs of claim against the Debtor's estate:

a. Claims Filed Before the Entry of the Order Establishing a Bar Date. Any claim that was filed with the Clerk before the entry of the Order granting this Motion that substantially conforms to the Official Form 410 shall be deemed properly filed, subject to the right of the Debtor or any other party-in-interest to object to the allowance of the claim.

b. Transfers of Claims. If a timely filed claim is transferred, the transferee must both (i) file a notice of transfer of the claim with the Clerk in accordance with Bankruptcy

Rule 3001(e), and (ii) serve a copy of the notice of transfer on the Debtor's counsel.

c. Form of Proof of Claim. Creditors should file proofs of claim in a form that substantially conforms to Official Form 410.

d. Substance of Proof of Claim. Proofs of claim against the Debtor's estate should be (1) written in the English language; (2) denominated in lawful currency of the United States as of the Petition Date; and (3) supported by evidence in accordance with the requirements of applicable laws and rules.

e. Place and Time for Filing Proofs of Claim. The Order establishing the proposed bar dates should dictate that proofs of claim must be filed so that they are actually received by the Clerk on or before the Bar Date (or alternative deadline for filing special claims as described above).

E. Proposed Ramifications for Failure to Timely or Properly File a Proof of Claim.

11. The Order granting this Motion should expressly state that a creditor's failure to timely or properly file a proof of claim in accordance with the Order, provided that such filing is required, shall (1) constitute grounds for disallowance of such claim, (2) render the creditor ineligible for distributions under any confirmed Chapter 11 plan, and (3) render the creditor bound by the terms of any confirmed Chapter 11 plan.

F. Notice of the Bar Date

12. The Court should approve the form of notice of the claims bar date, a copy of which is attached hereto as **Exhibit "A"** (the "Notice"). The Notice is a consolidated notice of (1) case commencement (2) the Bar Date, and (3) trading restrictions (if approved by this Court). The Debtor proposes to serve the Notice no later than two after entry of the order approving this Motion (the "Mailing Date"), by United States mail, first class postage prepaid, at the expense of

the estate, on the following parties whose addresses are known by the Debtor:

- a. all known creditors;
- b. all holders of Convertible Preferred Stock in the Debtor;
- c. all employees of the Debtor;
- c. all parties that have requested special notice in the Chapter 11 Case;
- d. all registered holders of Common Stock;
- e. all transfer agents through the Debtor's noticing agent Broadridge

(although the Debtor requests at least three days after entry of the order for this service).

G. Publication Notice

13. Additionally, the Debtor requests approval of the notice substantially in the form of the notice attached hereto as **Exhibit "B"** and requests authorization to file the notice in the national edition of one of the following newspapers: The Wall Street Journal, The New York Times, or USA Today (the "Publication Notice").² The Publication Notice will include, among other things, the substantive information contained in the Notice.

WHEREFORE, the Debtor respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

² Pursuant to the *Debtor's Emergency Motion for an Order (I) Combining the Hearing on the Joint Prepackaged Plan of the Debtor and Disclosure Statement, (II) Approving Notices Related Thereto, and (III) Granting Related Relief* (the "Combined Hearing Motion") filed contemporaneously herewith, the Debtor is also seeking authorization to file the Publication Notice incorporating information relating to the Combined Hearing. For purposes of efficiency, the Debtor is proposing to make a single publication notice that will include the information from both the Motion and the Combined Hearing Motion. To the extent the Combined Hearing Motion is not approved or the relief requested therein relating to the Publication Notice is modified, the Publication Notice will be modified accordingly.

RESPECTFULLY SUBMITTED this 13th day of August, 2017

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