

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

	§	Chapter 11
In re:	§	
	§	Case No. 20-43597-399
BRIGGS & STRATTON	§	
CORPORATION, <i>et al.</i> ,	§	(Jointly Administered)
	§	
Debtors.	§	Hearing Date: December 2, 2021
	§	Hearing Time: 2:00 p.m. (Central Time)
	§	Hearing Location: Courtroom 5 North
	§	111 S. 10th St., St. Louis, MO 63102

**NOTICE OF THE PLAN ADMINISTRATOR’S APPLICATION  
FOR AN ORDER PURSUANT TO 11 U.S.C. § 502(c) ESTIMATING  
THE GENERAL UNSECURED CLAIM VALUE OF CLAIMS  
FILED IN CONNECTION WITH THE LOMA FIRE**

**THIS IS A MOTION TO ESTIMATE AND/OR AN OBJECTION TO YOUR CLAIM(S). THE OBJECTING PARTY IS ASKING THE COURT TO SET THE AMOUNT OF AND/OR DISALLOW THE CLAIM(S) THAT YOU FILED IN THIS BANKRUPTCY CASE.**

**IF YOU CHOOSE TO RESPOND, A WRITTEN RESPONSE MUST BE FILED WITH THE CLERK OF COURT, U.S. BANKRUPTCY COURT, 111 SOUTH TENTH STREET, 4TH FLOOR, ST. LOUIS, MISSOURI 63102, AND A COPY SERVED UPON COUNSEL TO THE PLAN ADMINISTRATOR, (A) HALPERIN BATTAGLIA BENZIJA, LLP, 40 WALL STREET, 37<sup>TH</sup> FLOOR, NEW YORK, NEW YORK 10005 (ATTN: JULIE DYAS GOLDBERG, ESQ. AND CARRIE E. ESSENFELD, ESQ.) AND (B) CARMODY MACDONALD P.C., 120 S. CENTRAL AVENUE, SUITE 1800, ST. LOUIS, MISSOURI 63105 (ATTN: DORMIE KO, ESQ.), SO THAT THE RESPONSE IS RECEIVED NO LATER THAN 11:59 P.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 25, 2021.**

**FAILURE TO FILE A RESPONSE TIMELY MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE. YOU SHOULD READ THIS NOTICE AND THE ACCOMPANYING MOTION CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE.**

**Important Information Regarding the Application**

1. **Grounds for the Application.** By this Application, the Plan Administrator, on behalf of the Wind-Down Estates of the Debtors, is seeking to **estimate, reduce and/or disallow** your claim(s) on the grounds more fully set forth in the Application. The claim(s) subject to the Application (collectively, the “**Loma Fire Claims**”) are listed in the table attached to the Application as **Exhibit A.**



### **Responding to the Application**

2. **Parties Required to File a Response.** If you disagree with the relief requested in the Application filed with respect to any of your claims, you may file a response (each, a “**Response**”) with the Court in accordance with the procedures described below and appear at the Hearing (as defined herein).

3. **Response Contents.** Each Response should contain the following (at a minimum):

- a. a caption stating the name of the Court, the name of the Debtors, the case number, and the Application and claim or claims within the Application to which the Response is directed;
- b. a concise statement setting forth the reasons why the Court should not grant the relief requested in the Application with respect to such claim(s), including the factual and legal bases upon which you rely in opposing the Application;
- c. copies of documentation or other evidence of your claim (not previously filed with proof of such claim) on which your Response is based (excluding confidential, proprietary, or other protected information, copies of which must be provided to the counsel to the Plan Administrator, subject to appropriate confidentiality constraints, if any); and
- d. the following contact information:
  - (i) your name, address, telephone number, and email address or the name, address, telephone number, and email address of your attorney or designated representative to whom the attorneys for the Plan Administrator should serve a reply to the Response, if any; or
  - (ii) the name, address, telephone number, and email address of the party with authority to reconcile, settle, or otherwise resolve the objection on your behalf (to the extent different from the information detailed in paragraph 3(d)(i) above).

4. **Response Deadline.** Your Response must be filed with the Court and served so as to be *actually received* by **11:59 p.m. (Central Time) on November 25, 2021** (the “**Response Deadline**”).

5. **Failure to Respond.** A Response that is not filed and served in accordance with the procedures set forth herein may not be considered by the Court at the Hearing. **Absent an agreement with the Plan Administrator resolving the Application on consent, failure to file and serve timely a Response as set forth herein and appear at the Hearing may result in the Court granting the relief requested in the Application without further notice or hearing.** Upon entry of an order, you will be served with a notice of entry, and a copy, of the order.

### **Hearing on the Application**

6. **Date, Time, and Location**. If necessary, a hearing (the “**Hearing**”) on the Application will be held on **December 2, 2021 at 2:00 p.m. (Central Time) in the United States Bankruptcy Court for the Eastern District of Missouri, 5th Floor, North Courtroom, Thomas F. Eagleton United States Courthouse, 111 South Tenth Street, St. Louis, Missouri**. Such Hearing may be adjourned from time to time in these chapter 11 cases in the Plan Administrator’s sole discretion. **You must attend the Hearing if you disagree with the Application and have filed a Response**. If you file a Response in accordance with the response procedures herein, but such Response is not resolved prior to the Hearing, and you appear at the Hearing, the Application may be heard at the Hearing or adjourned to a subsequent hearing in the Plan Administrator’s sole discretion. If a subsequent hearing is determined to be necessary, the Plan Administrator will file with the Court and serve you with a notice of the subsequent hearing (the date of which will be determined in consultation with the affected claimant(s)).

### **Additional Information**

7. **Questions or Information**. Copies of the pleadings (collectively, the “**Pleadings**”) filed in these chapter 11 cases are available at no cost at the Debtors’ case website <http://www.kccllc.net/Briggs>. You may also obtain copies of any of the Pleadings filed in these chapter 11 cases for a fee at the Court’s website at <https://pcl.uscourts.gov/pcl/>. A login identification and password to the Court’s Public Access to Court Electronic Records (“**PACER**”) are required to access this information and can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>.

### **Reservation of Rights**

**NOTHING IN ANY APPLICATION OR NOTICE IS INTENDED OR SHALL BE DEEMED TO CONSTITUTE (I) AN ADMISSION AS TO THE VALIDITY OF ANY PREPETITION CLAIM AGAINST A DEBTOR; (II) A WAIVER OF ANY PARTY’S RIGHT TO DISPUTE ANY PREPETITION CLAIM ON ANY GROUNDS; (III) A PROMISE OR REQUIREMENT TO PAY ANY PREPETITION CLAIM; (IV) AN IMPLICATION OR ADMISSION THAT ANY PARTICULAR CLAIM IS OF A TYPE SPECIFIED OR DEFINED IN THE MOTION OR ANY ORDER GRANTING THE RELIEF REQUESTED BY THE MOTION; (V) A REQUEST OR AUTHORIZATION TO ASSUME ANY PREPETITION AGREEMENT, CONTRACT, OR LEASE PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE; OR (VI) A WAIVER OF THE PLAN ADMINISTRATOR’S RIGHTS UNDER THE BANKRUPTCY CODE OR ANY OTHER APPLICABLE LAW.**

Dated: November 2, 2021  
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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-and-

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*Counsel to the Plan Administrator*

**EXHIBIT A**

**Schedule of Loma Fire Claims**

Exhibit A-1  
Briggs & Stratton Corp., et al.

Claimant Name and Address	Case Number	Debtor Name	Claim Number	Date Filed	Asserted	
					Claim Amount	Priority
1) Allstate Insurance Company  3075 Sanders Rd Northbrook, IL 60062-7119	20-43597	Briggs & Stratton Corporation	573	9/15/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$163,356.71 Total: \$163,356.71	
2) Claudia Hartke  C/O Anna Dibenedetto Dibenedetto & Lapcevic, LLP 1101 Pacific Avenue, Suite 320 Santa Cruz, CA 95060	20-43597	Briggs & Stratton Corporation	837	9/29/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$0.00 Total: \$0.00	
3) Farmers Insurance Exchange  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1590	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$406,298.25 Total: \$406,298.25	
4) Fire Insurance Exchange  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1594	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$1,883,081.31 Total: \$1,883,081.31	
5) Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Co Grand Rapids, Michigan and Mid-Century Insurance Co  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1717	9/30/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$3,858,844.50 Total: \$3,858,844.50	
6) Foremost Insurance Company Grand Rapids, Michigan  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1597	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$162,664.74 Total: \$162,664.74	
7) Hartke, Claudia  Anna Dibenedetto, Esq. C/O Dibenedetto & Lapcevic, LLP 1101 Pacific Avenue, Suite 320 Santa Cruz, CA 95060	20-43597	Briggs & Stratton Corporation	875	9/16/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$0.00 Total: \$0.00	
8) Liberty Mutual Insurance  c/o Thomas M. Regan Cozen OConnor 501 West Broadway, Suite 1610 San Diego, CA 92101	20-43597	Briggs & Stratton Corporation	742	9/24/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$653,268.37 Total: \$653,268.37	
9) Mid-Century Insurance Company  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1600	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$1,406,800.20 Total: \$1,406,800.20	

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
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In re: § Chapter 11  
BRIGGS & STRATTON §  
CORPORATION, *et al.*, § Case No. 20-43597-399  
§ (Jointly Administered)  
Debtors. § Hearing Date: December 2, 2021  
§ Hearing Time: 2:00 p.m. (Central Time)  
§ Hearing Location: Courtroom 5 North  
§ 111 S. 10th St., St. Louis, MO 63102

**THE PLAN ADMINISTRATOR’S APPLICATION FOR AN ORDER  
PURSUANT TO 11 U.S.C. § 502(c) ESTIMATING THE GENERAL UNSECURED  
CLAIM VALUE OF CLAIMS FILED IN CONNECTION WITH THE LOMA FIRE**

**THIS IS A MOTION TO ESTIMATE AND/OR AN OBJECTION TO YOUR CLAIM(S). THE OBJECTING PARTY IS ASKING THE COURT TO SET THE AMOUNT OF AND/OR DISALLOW THE CLAIM(S) THAT YOU FILED IN THIS BANKRUPTCY CASE.**

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Alan D. Halperin as Plan Administrator (the “**Plan Administrator**”) under the *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors*, dated November 9, 2020 [Docket No. 1226] (the “**Plan**”),<sup>1</sup> respectfully represents as follows in support

<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

of this application (the “**Application**”) for an order estimating the general unsecured claim value of the claims filed in connection with the Loma Fire (collectively, the “**Loma Fire Claims**”), fixing such Loma Fire Claims for purposes of distribution reserves, and in the process, reducing in amount certain Loma Fire Claims. In support of this Application, attached hereto as **Exhibit B** is the *Declaration of Alan D. Halperin as Plan Administrator in Support of the Plan Administrator’s Application for an Order Pursuant to 11 U.S.C. § 502(c) Estimating the General Unsecured Claim Value of Claims Filed in Connection with the Loma Fire* (the “**Halperin Claims Declaration**”).

#### **Preliminary Statement**

Upon information and belief, prior to the Petition Date, a wildfire broke out at 335500 Loma Chiquita Road, Santa Clara County, California (the “**Loma Fire**”). Ultimately, the Loma Fire burned 4,474 acres of land and destroyed more than two dozen residences and outbuildings. Cal Fire, the state agency responsible for fighting wildfires, prepared a detailed report on the Loma Fire. During the course of its investigation, Cal Fire recovered the remains of three portable generators from the location the Loma Fire was thought to have started. The Loma Fire damaged the generators so badly such that all identifying marks were removed. A consulting expert hired by Cal Fire opined that the wildfire was caused by a spark from a portable generator with an extension cord plugged in. An expert hired by an insurance company opined that the generator in question appeared to be a Briggs & Stratton unit.

Five separate lawsuits resulted from the Loma Fire, four of which name Briggs & Stratton as a defendant. One of the four lawsuits naming Briggs & Stratton was filed by an

individual, Claudia Hartke.<sup>2</sup> The other three lawsuits naming Briggs & Stratton were filed by groups of insurers seeking to recover the payments they made to their policyholders.<sup>3</sup> All of the lawsuits are in the preliminary stages of litigation and the claims asserted have not been tested or investigated in discovery. Further, more than \$11 million in associated claims have been filed against the Wind-Down Estates by affected property owners and insurers.<sup>4</sup> Although the Plan Administrator does not admit the veracity, sufficiency, or accuracy of any of the allegations raised by the Loma Fire claimants (collectively, the “**Claimants**”) in the pending litigations or underlying any and all of the Loma Fire Claims, and, after consultation with his professionals, believes that certain defenses/offsets to the Loma Fire Claims and in the pending litigations may exist, the Plan Administrator also believes that it would be financially imprudent to continue to defend the lawsuits given the modest recoveries anticipated in these chapter 11 cases and the Wind-Down Estates’ limited exposure due to existing insurance coverage. Moreover, the litigation needed to fix the Loma Fire Claims would also unduly delay the administration of the chapter 11 cases.

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<sup>2</sup> The original caption of this case was *Claudia Hartke v. Andre Y. Segal, Suzanna G, Segal, Ran Ben Vais, Jakob Laggner, SAAS, LLC, Green Acres Farm, Inc., Caya Group, LLC, Wish River, LLC, Integral Earth, LLC and Does 1 through 50, inclusive*, Superior Court of the State of California, County of Santa Clara Case No. 18CV333942. Subsequent amendments to the pleadings added the following parties as defendants: Briggs & Stratton Corporation, MTD Consumer Group, Inc., MTD Products Company Inc., and Tech-Bily, LLC.

<sup>3</sup> The three additional cases naming Briggs & Stratton Corporation are as follows: (a) *Allstate Insurance Company v. SAAS, LLC, Andre Y. Segal, Suzanna G, Segal, Ran Ben Vais, Briggs & Stratton Corporation, MTD Consumer Group, Inc., MTD Products Company Inc. and Troy Bilt LLC*, Superior Court of the State of California, County of Santa Clara Case No. 19CV353780; (b) *Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, and Mid-Century Insurance Company v. SAAS, LLC, Andre Y. Segal, Suzanna G, Segal, Ran Ben Vais, Briggs & Stratton Corporation, MTD Consumer Group, Inc., MTD Products Company Inc. and Troy-Bilt LLC and Does 1 through 50, inclusive*, Superior Court of the State of California, County of Santa Clara Case No. 19CV353342, and (c) *Liberty Mutual Insurance v. SAAS, LLC, Andre Y. Segal, Suzanna G, Segal, Ran Ben Vais, Briggs & Stratton Corporation, MTD Consumer Group, Inc., MTD Products Company Inc. and Troy-Bilt LLC and Does 1 through 50, inclusive*, Superior Court of the State of California, County of Santa Clara Case No. 19CV353889.

<sup>4</sup> Claudia Hartke filed Claim Nos. 837 and 875, each for not less than \$3,100,000.00; Fire Insurance Exchange et al., filed Claim No. 1717 in the amount of \$3,858,844.50; Fire Insurance Exchange filed Claim No. 1594 in the amount of \$1,883,081.31; Foremost Insurance Company filed Claim No. 1597 in the amount of \$162,664.74; Mid-Century Insurance Company filed Claim No. 1600 in the amount of \$1,406,800.20; Liberty Mutual filed Claim No. 742 in the amount of \$653,268.37; and Allstate Insurance Company filed Claim No. 573 in the amount of \$163,356.71.

Accordingly, the Plan Administrator seeks a procedural resolution that will estimate the Loma Fire Claims for distribution purposes so that the Wind-Down Estates and holders of unsecured claims will not be prejudiced by undue delay. Likewise, the Claimants will not be prejudiced as the Plan Administrator seeks to estimate and reserve for the Loma Fire Claims at the maximum exposure the Wind-Down Estates could have given their insurance coverage.

It is undisputed that all of the Loma Fire Claims originate from the same set of facts and circumstances (or, for insurance purposes, the same occurrence), irrespective of whose property was damaged. It is also undisputed that the Debtors have insurance coverage for the damages associated with the Loma Fire in the event they are found liable for such damages, in whole or in part. However, the Debtors have a \$2 million self-insured retention with respect to the relevant insurance policy, per occurrence.<sup>5</sup> Thus, while there are multiple Claimants at issue, the Debtors only have one \$2 million self-insured retention obligation, though it is possible that recovery on such \$2 million may, at some point in the future, be allocated among a variety of different Claimants. Accordingly, by this Application, the Plan Administrator seeks to fix a maximum estimated claim associated with the Loma Fire Claims of \$2 million, which claim the Plan Administrator proposes to reserve for distribution purposes unless and until a global resolution of the Loma Fire litigations are achieved and/or the Debtors' liability is established.

By this Application, the Plan Administrator seeks to estimate and reserve, for distribution purposes, the nine (9) Loma Fire Claims listed on **Exhibit A** in a total aggregate amount of \$2 million, which equals the maximum amount of the Debtors' self-insured retention in connection with the Loma Fire Claims and is, thus, the maximum amount of liability the Wind-Down Estates can reasonably anticipate. In his judgment, the Plan Administrator believes this

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<sup>5</sup> AXA XL Policy No. US00070498LI16A.

constitutes both fair and equitable treatment of the Loma Fire Claims and is a necessary step in order to make distributions in accordance with the Plan and avoid undue delay of the administration of the Wind-Down Estates. For the reasons set forth in detail below, the Plan Administrator requests the Court's entry of an Order estimating the general unsecured claims of the Loma Fire Claimants in total combined amount of \$2 million.

### **Background**

#### **A. The Chapter 11 Bankruptcy Case**

1. On July 20, 2020 (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the "**Creditors' Committee**") in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner was appointed in these chapter 11 cases. The Debtors' chapter 11 cases were jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015(b) of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the Eastern District of Missouri (the "**Local Rules**").

3. Pursuant to an order dated August 24, 2020 [Docket No. 564] (the "**General Bar Date Order**"), this Court established October 7, 2020 (the "**General Bar Date**") as the last day for non-governmental entities to file prepetition claims against the Debtors and their estates, and January 19, 2021 as the last day for governmental entities to file prepetition claims against the Debtors and their estates. In accordance with the General Bar Date Order, the Debtors' Claims

and Noticing Agent served a *Notice of Deadlines to File Proofs of Claim* and a Proof of Claim Form as evidenced by the *Certificate of Service* filed with this Court [Docket No. 576]. Additionally, in accordance with the General Bar Date Order, the Debtors published a notice of the General Bar Date in the national edition of the *New York Times* and in the *St. Louis Post Dispatch*, as evidenced by the *Certificate of Publication* filed with this Court [Docket No. 826].

4. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets<sup>6</sup> to Bucephalus Buyer, LLC (the “**Purchaser**”) and on September 21, 2020, the Debtors closed the Sale Transaction.<sup>7</sup> On December 16, 2020, the Debtors filed the Plan, which was confirmed by the *Findings of Fact, Conclusions of Law, and Order Confirming the Plan* on December 18, 2020 [Docket No. 1485] (the “**Confirmation Order**”).

5. The Effective Date of the Plan occurred on January 6, 2021 and the *Notice of Entry of Order Confirming the Plan and Occurrence of the Effective Date* [Docket No. 1538] was filed, at which time the Creditors’ Committee was relieved of its duties.

6. On the Effective Date, pursuant to the Plan, Alan D. Halperin was appointed as the Plan Administrator to “serve as the initial director or manager, as applicable, and sole officer of each Wind-Down Estate.” *See* Plan, § 5.4(c).

7. The Plan Administrator is in the process of implementing the Plan, including resolving claims disputes and making distributions to creditors.

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<sup>6</sup> *Order (I) Authorizing the Sale of the Assets and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 898].

<sup>7</sup> *See Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, And (II) the Occurrence of Closing of the Sale Transaction* [Docket No. 964].

8. On February 12, 2021, the Court entered that certain *Order Approving (I) Claims Objection Procedures; (II) Claims Hearing Procedures; and (III) Granting Related Relief* [Docket No. 1614] (the “**Omnibus Procedures Order**”).

9. On June 10, 2021, the Court entered that certain *Order Granting Motion of the Plan Administrator Extending Time to Object to All Claims* [Docket No. 1773] and extended the Plan Administrator’s deadline to object to claims to December 31, 2021.

#### **B. Distributions Under the Plan**

10. The Plan Administrator is responsible for implementing the Plan which provides for the liquidation of any remaining assets of the Debtors and the distribution of proceeds to the holders of Allowed Claims. The holders of allowed general unsecured claims against the Debtors, Classes 4(a) – (e), are entitled to receive their Pro Rata Share of Net Cash Proceeds (of the applicable Debtor) after the Priority Tax Claims, Priority Non-Tax Claims, and the Other Secured Claims are satisfied or reserved for in full in accordance with the Plan. *See* Plan, §§ 4.16(b), 4.17(b), 4.18(b), 4.19(b), and 4.20(b). “Net Cash Proceeds” is defined as all Cash realized from business and/or Wind-Down operations and Sale Transaction Proceeds less the Cash required to pay (or reserve for) Administrative Expense Claims, Fee Claims, and DIP Claims, fund the Wind-Down Budget and pay Statutory Fees. *See* Plan § 1.70. To date, the Plan Administrator has paid all allowed Administrative Expense Claims, Secured Claims, Priority Claims, and Statutory Fees.

11. The Plan Administrator now endeavors to take steps to fix the general unsecured claims pool so that he can properly calculate distribution amounts and reserves for the General Unsecured Creditors. Section 7.5 of the Plan provides a mechanism for the Plan Administrator to estimate claims pursuant to section 502(c) of the Bankruptcy Code and states

“[i]n the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claims, including Insured Claims, the amount so estimated shall constitute either the Allowed amount of such Claims, or a maximum limitation on such Claims, as determined by the Bankruptcy Court.” In this instance, as the Loma Fire Claims have not yet been proven, the Plan Administrator seeks estimation of the Loma Fire Claims to provide a maximum limitation on such Claims, with such amount to be allowed in the future in a total amount not to exceed \$2 million. The Plan Administrator then proposes to hold distributions on such estimated Loma Fire Claims in reserve until such time as the Loma Fire Claims are fixed by global resolution, agreement, or direction by a court of competent jurisdiction.

### **C. The Claims Reconciliation Process**

12. The Plan Administrator, with the assistance of his professionals and advisors, has reviewed the Debtors’ schedules of assets and liabilities, the filed proofs of claim, the Debtors’ books and records, and other data. The review process included identifying particular categories of claims that should be disallowed, expunged, reduced and allowed, or reclassified in order to avoid possible double recovery or otherwise improper recovery to claimants.

13. The Plan Administrator has made great strides in the claims resolution process. To date, the Debtors or the Plan Administrator have filed twenty-eight (28) omnibus objections to claims and have resolved the majority of the Disputed Claims (as defined in Section 1.43 of the Plan) as the Plan Administrator works towards making distributions to the Debtors’ general unsecured creditors. However, there are a number of large litigation claims including, but not limited to, the Loma Fire Claims which need to be fixed before any distributions to such creditors may occur. This Application is an important and necessary step in fixing such unliquidated claims.

14. As set forth in the Halperin Claims Declaration, the Plan Administrator and his professionals have examined the Loma Fire Claims, the documentation provided by the Claimants with respect to the claims, and the Debtors' respective books and records, and have determined that the maximum liability the Debtors have relating to the Loma Fire Claims is the amount of the Debtors' self-insured retention under the applicable insurance policy, which is \$2 million.

15. Thus, for the reasons described below, the Plan Administrator has determined that the Loma Fire Claims should be reduced so that their maximum combined total amount is no more than \$2 million, which is the amount of the Debtors' self-insured retention relating to all of the Loma Fire Claims as each such Loma Fire Claim is associated with the same facts and circumstances or "occurrence" for purposes of insurance coverage.

16. The Plan Administrator notes that he is not currently requesting this Court to determine how to allocate the \$2 million among the Loma Fire Claims; he is simply seeking the Court's assistance in setting a maximum aggregated liability amount for all of the Loma Fire Claims so that he can establish appropriate reserves. The Plan Administrator is willing to work with the Court and the Claimants to determine the appropriate allocation upon a global resolution of the litigations and/or an order from a court of competent jurisdiction directing the allocation of proceeds from insurance, including recoveries associated with any future allowance of claims related to the Debtors' self-insured retention.

### **Jurisdiction**

17. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Section 7.5 of the Plan. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Relief Requested**

18. Pursuant to sections 105(a) and 502(c) of the Bankruptcy Code, Bankruptcy Rule 9014, and Local Rule 3007(C), the Plan Administrator respectfully requests entry of an order (the “**Proposed Order**”)<sup>8</sup> setting the maximum liability amount for the Loma Fire Claims, listed on **Exhibit A** hereto, at no more than \$2 million.

**Relief Requested Should Be Granted**

19. Section 502(c) of the Bankruptcy Code provides in pertinent part that “[t]here shall be estimated for purpose of allowance under this section – (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case.” 11 U.S.C. § 502(c). The Plan Administrator submits that, absent the estimation of the Loma Fire Claims, their resolution would unduly delay administration of the Wind-Down Estates, as the full scale litigation of the Loma Fire Claims will consume significant judicial hours, leading to delays of months or years, and unnecessary expenditures of significant amounts of estate resources.

20. Each of the Claimants filed proofs of claim identifying a dollar amount in line with what they assert is the full amount of their damages resulting from the Loma Fire. However, the Debtors’ liability to any and all of the Claimants is capped at the \$2 million self-insured retention under the applicable insurance policy. The litigations relating to the Loma Fire Claims are still in their early stages and will likely take several years given their current posture and delays due to the COVID-19 pandemic. As of the date of this Application, no Court has determined liability related to the Loma Fire. The Plan Administrator submits that setting the maximum amount of the aggregated claims at \$2 million, the upper limit of the Debtors’ potential

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<sup>8</sup> Copies of the Proposed Order will be made available on the Debtors’ case information website at <http://www.kccllc.net/Briggs>.

liability, establishes a fair approach that is exactly the type of equitable treatment the powers of estimation exist to address. The Plan Administrator reiterates that because damages have yet to be assigned, he is not seeking to allocate the \$2 million among the various Claimants. Rather, the Plan Administrator is simply seeking to set the Wind-Down Estates' maximum liability, and is willing to work with this Court and the Claimants to determine the appropriate allocation of the amount of each of the Loma Fire Claims at the appropriate time. The Plan Administrator believes the Loma Fire Claims to be the only claims asserted relating to the Loma Fire. However, to the extent that there are any claims that are asserted but not listed on Exhibit A, the Plan Administrator reserves the right to request the same relief described herein with respect to any such later discovered claims.<sup>9</sup>

21. A court may authorize the estimation and approximation of the value of a claim using “whatever method is best suited to the circumstances”, recognizing that absolute certainty is not possible. *In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984). The court is not bound by legal rules that govern the ultimate value of the claim; it has wide discretion in establishing the method to be used to arrive at an estimate of the value of a claim or claims. *Id.*; *Bittner v. Borne Chemical Co.*, 691 F.2d 134, 135 (3rd Cir. 1982) (estimation requires only “sufficient evidence on which to base a reasonable estimate of the claim”); *In re Baldwin-United Corp.*, 55 B.R. 885, 898 (Bankr. S.D. Ohio 1985) (estimation “does not require that a bankruptcy judge be clairvoyant”).

22. Bankruptcy courts have wide discretion in choosing the process for estimating a claim. The methods used by courts include summary trials, a review of written

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<sup>9</sup> This should present no issue as the aggregate retention per occurrence (that being the Loma Fire) is the same \$2 million.

submissions of proposed facts, and a review of the pleadings and briefs. *See e.g., In re Baldwin-United Corp.*, 55 B.R. at 899; *In re Windsor Plumbing Supply*, 170 B.R. 503, 517 (Bankr. E.D.N.Y. 1994); *In re Lane*, 68 B.R. 609, 613 (Bankr. D. Hawaii 1986). A court may also apply summary trial procedures for each claim subject to estimation. *In re Apex Oil Corp.*, 92 B.R. 843, 845 (Bankr. E.D. Mo. 1988) (applying summary trial briefing schedule for each claim subject to estimation).

23. In addition to the Court's ability to estimate claims, the Court's equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) authorizes the Court's authority to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." The Plan Administrator submits that given both the need for an expeditious resolution of the Loma Fire Claims together with the Debtors' insurance coverage related to the claims, the exercise of the Court's broad powers under section 105(a) to carry out section 502(c) by estimating the Loma Fire Claims at \$2 million for purposes of distribution by the Wind-Down Estates is necessary and appropriate. If the Loma Fire Claims are not fixed for distribution purposes, the Plan Administrator would be required to reserve for amounts far in excess of the Debtors' liability as it relates to those claims which will interfere the Plan Administrator's ability to make distributions to Class 4(a) – (e) claimants. The Plan Administrator further posits that estimating the Loma Fire Claims as proposed in this Application is in the best interests of the Claimants as the relief requested seeks to estimate the Loma Fire Claims at the maximum amount of exposure that is reasonably practicable given the Debtors' insurance coverage. The Plan Administrator submits that fixing the Loma Fire Claims, without admitting any liability, at a maximum aggregate amount of \$2 million allows him to set appropriate reserves, and is a necessary step toward fulfilling his duty to timely distribute to the general unsecured

creditors in these cases. The Plan Administrator submits that estimating the Loma Fire Claims is in the best interests of the Claimants, all creditors of the Wind-Down Estates, and all other parties-in-interest.

#### **Reservation of Rights**

24. Without limiting any of the foregoing, the Plan Administrator reserves the right to amend this Application, file additional pleadings in support of this Application or take other appropriate actions, including (i) respond to any allegation that may be raised in a response filed by a Claimant or an interested party; (ii) object further to any Loma Fire Claim for which a Claimant provides additional support; and/or (iii) object further to any of the Loma Fire Claims based on additional information that may be discovered upon further review by the Plan Administrator or through discovery pursuant to the Bankruptcy Rules.

#### **Separate Contested Matter**

25. To the extent a response is filed regarding any Loma Fire Claim identified in **Exhibit A**, and the Plan Administrator is not able to resolve such response, the request for estimation and/or objection to such claim by the Plan Administrator shall be a separate contested matter under Bankruptcy Rule 9014.

#### **Notice**

26. Notice of this Application will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri (Attn: Sirena Wilson, Esq.); (ii) the Claimant; (iii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (iv) any other party entitled to notice pursuant to the Omnibus Procedures Order (collectively, the “**Notice Parties**”).

**No Prior Request**

27. No prior request for the relief sought herein has been made by the Plan Administrator to this or any other court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Plan Administrator respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: November 2, 2021  
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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-and-

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*Counsel to the Plan Administrator*

**EXHIBIT A**

**Schedule of Loma Fire Claims**

Exhibit A-1  
Briggs & Stratton Corp., et al.

Claimant Name and Address	Case Number	Debtor Name	Claim Number	Date Filed	Asserted	
					Claim Amount	Priority
1) Allstate Insurance Company  3075 Sanders Rd Northbrook, IL 60062-7119	20-43597	Briggs & Stratton Corporation	573	9/15/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$163,356.71 Total: \$163,356.71	
2) Claudia Hartke  C/O Anna Dibenedetto Dibenedetto & Lapcevic, LLP 1101 Pacific Avenue, Suite 320 Santa Cruz, CA 95060	20-43597	Briggs & Stratton Corporation	837	9/29/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$0.00 Total: \$0.00	
3) Farmers Insurance Exchange  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1590	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$406,298.25 Total: \$406,298.25	
4) Fire Insurance Exchange  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1594	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$1,883,081.31 Total: \$1,883,081.31	
5) Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Co Grand Rapids, Michigan and Mid-Century Insurance Co  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1717	9/30/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$3,858,844.50 Total: \$3,858,844.50	
6) Foremost Insurance Company Grand Rapids, Michigan  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1597	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$162,664.74 Total: \$162,664.74	
7) Hartke, Claudia  Anna Dibenedetto, Esq. C/O Dibenedetto & Lapcevic, LLP 1101 Pacific Avenue, Suite 320 Santa Cruz, CA 95060	20-43597	Briggs & Stratton Corporation	875	9/16/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$0.00 Total: \$0.00	
8) Liberty Mutual Insurance  c/o Thomas M. Regan Cozen OConnor 501 West Broadway, Suite 1610 San Diego, CA 92101	20-43597	Briggs & Stratton Corporation	742	9/24/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$653,268.37 Total: \$653,268.37	
9) Mid-Century Insurance Company  Teresa R. Ponder c/o Berger Kahn, A Law Corporation 1 Park Plaza, Suite 340 Irvine, CA 92614	20-43597	Briggs & Stratton Corporation	1600	10/7/2020	Secured: \$0.00 Administrative: \$0.00 Priority: \$0.00 Unsecured: \$1,406,800.20 Total: \$1,406,800.20	

**EXHIBIT B**

**Halperin Claims Declaration**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

**In re:** § **Chapter 11**  
§  
**BRIGGS & STRATTON** § **Case No. 20-43597-399**  
**CORPORATION, et al.,** § **(Jointly Administered)**  
§  
**Debtors.** §

**DECLARATION OF ALAN D. HALPERIN IN SUPPORT OF  
THE PLAN ADMINISTRATOR’S APPLICATION FOR AN ORDER PURSUANT  
TO 11 U.S.C. § 502(c) ESTIMATING THE GENERAL UNSECURED CLAIM VALUE  
OF CLAIMS FILED IN CONNECTION WITH THE LOMA FIRE**

I, Alan D. Halperin, solely in my capacity as Plan Administrator in the above-referenced cases, make this declaration (the “**Declaration**”) under 28 U.S.C. § 1746:

1. I am the Plan Administrator of the Wind-Down Estates of Briggs & Stratton Corporation and its affiliated debtors (the “**Debtors**”).<sup>1</sup>

2. Except as otherwise indicated, this Declaration is based upon my personal knowledge; my review of relevant documents (including the Schedules, the Loma Fire Claims, and the Application); information provided to me by: (i) a former officer of the Debtors with whom the Wind-Down Estates have entered into a consulting agreement, (ii) former Debtor employees who are currently employed by the Purchaser and who provide claims reconciliation support to the Debtors pursuant to a transition services agreement with the Purchaser, (iii) the Debtors’ legal and financial advisors, and/or (iv) my legal counsel and such professionals working directly with me or under my supervision, direction, or control; or my opinion, based upon my experience, knowledge, and information concerning the Debtors’ operations. If called upon to testify, I would

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<sup>1</sup>Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

testify competently to the facts set forth herein. I am authorized to submit this Declaration on behalf of the Wind-Down Estates, in support of *The Plan Administrator's Application for an Order Pursuant to 11 U.S.C. § 502(c) Estimating the General Unsecured Claim Value of Claims Filed in Connection with the Loma Fire* (the "**Application**").

3. To the best of my knowledge, information, and belief, the assertions made in the Application are accurate. I can confirm that the Plan Administrator's advisors have examined each of the Loma Fire Claims, any and all documentation provided by the Claimant with respect to each of the Loma Fire Claims, the Debtors' respective books and records, and the Schedules, and have determined that, without admitting any liability, the total maximum aggregate amount of all Loma Fire Claims could be \$2 million, as that is the maximum amount of the Debtors' self-insured retention, per occurrence, in connection with the insurance coverage potentially implicated with respect to the Loma Fire Claims.

4. Failure to estimate the Loma Fire Claims at a total combined maximum amount of \$2 million will impede and delay my ability to administer the Wind-Down Estates, establish appropriate reserves, and make distributions. As such, I believe that the estimation of the Loma Fire Claims at a total maximum amount of \$2 million, without admitting any liability, is appropriate.

5. I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: November 2, 2021

/s/ Alan D. Halperin  
Alan D. Halperin  
Solely in His Capacity as Plan Administrator