

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Fresh & Easy, LLC,

Debtor.

)
) Chapter 11
)
) Case No. 15-12220 (BLS)
)
) **Objections Due: October 1, 2019 at 4:00 p.m. ET**
) **Hearing Date: To be determined**
)

**LIQUIDATING TRUSTEE’S EIGHTH MOTION FOR AN ORDER EXTENDING
THE DEADLINE FOR THE FILING OF OBJECTIONS
TO CLAIMS, INCLUDING ADMINISTRATIVE CLAIMS**

Peter S. Kravitz as Liquidating Trustee of the Fresh & Easy Liquidating Trust (the “Liquidating Trustee”), files this motion (the “Motion”) for an order pursuant to Section XIV(E) of the Plan (as defined below), and Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), further extending the deadlines under the Plan for objecting to claims (the “Claims Objection Deadline”) and administrative claims (the “Administrative Claims Objection Deadline”), and respectfully represents as follows:

Jurisdiction

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On October 30, 2015, Fresh & Easy LLC (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

3. On April 27, 2017, an *Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* (the “Plan”) was confirmed by this Court [D.I. 2143]. Section XIII of the

Plan provides for the appointment of a Liquidating Trustee. Section XIII (D) of the Plan provides, among other things, that the Liquidating Trustee “shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation . . . the right to: (v) object to Disputed Claims and, without Court approval, settle, compromise, withdraw or resolve in any manner such objections.”

4. Pursuant to Section II(A)(26) of the Plan, the Claim Objection Deadline is “ninety (90) days after the Effective Date, or such later date as may be ordered by the Court.”

5. Pursuant to Section II(A)(6) of the Plan, the Administrative Claims Objection Deadline is “one hundred twenty (120) days after the Effective Date, unless otherwise extended by order of the Court.”

6. Pursuant to Section XIV(E) of the Plan, “the Claims Objection Deadline may be extended by the Court upon motion and notice.”

7. On June 5, 2017 (the “Effective Date”), the Fresh & Easy Liquidating Trust was created pursuant to, and to effectuate, the Plan, and the Liquidating Trustee executed the *Fresh & Easy Liquidating Trust Agreement*.

8. Given that the Effective Date of the Plan was June 5, 2017, the original Claim Objection Deadline was September 5, 2017, and the original Administrative Claims Objection Deadline was October 3, 2017.

9. On August 8, 2017, the Liquidating Trustee filed his *Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2306].

10. On August 31, 2017, the Court entered an *Order Granting Liquidating Trustee’s Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2332] extending the Claims Objection Deadline to December 4, 2017 and the Administrative Claims Objection Deadline to January 2, 2018.

11. On November 10, 2017, the Liquidating Trustee filed his *Second Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2404].

12. On December 1, 2017, the Court entered an *Order Granting Liquidating Trustee's Second Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2413], extending the Claims Objection Deadline to March 5, 2018 and the Administrative Claims Objection Deadline to April 2, 2018.

13. On February 28, 2018, the Liquidating Trustee filed his *Third Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. No. 2454].

14. On March 16, 2018, the Court entered an *Order Granting Liquidating Trustee's Third Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2457], extending the Claims Objection Deadline to July 3, 2018 and the Administrative Claims Objection Deadline to July 31, 2018.

15. On July 3, 2018, the Liquidating Trustee filed his *Fourth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. No. 2473].

16. On August 1, 2018, the Court entered an *Order Granting Liquidating Trustee's Fourth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2487], extending both the Claims Objection Deadline and the Administrative Claims Objection Deadline to October 31, 2018.

17. On October 29, 2018, the Liquidating Trustee filed his *Fifth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. No. 2488].

18. On August 1, 2018, the Court entered an *Order Granting Liquidating Trustee's Fifth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. 2499], extending both the Claims Objection Deadline and the Administrative Claims Objection Deadline to February 28, 2019.

19. On February 21, 2019, the Liquidating Trustee filed his *Sixth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. No. 2514].

20. On March 26, 2019, the Court entered an Order Granting Liquidating Trustee's Sixth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims [D.I. 2517], extending both the Claims Objection Deadline and the Administrative Claims Objection Deadline to June 28, 2019.

21. On June 28, 2019, the Liquidating Trustee filed his *Seventh Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* [D.I. No. 2533].

22. On July 24, 2019, the Court entered an Order Granting Liquidating Trustee's Seventh Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims [D.I. 2539], extending both the Claims Objection Deadline and the Administrative Claims Objection Deadline to September 26, 2019.

Relief Requested

23. By this Motion, the Liquidating Trustee requests entry of an order extending the Claims Objection Deadline and the Administrative Claims Objection Deadline by ninety (90) days to and including Thursday, December 26, 2019, without prejudice to the Liquidating Trustee's right to seek further extensions of the Claims Objection Deadline and the Administrative Claims Objection Deadline.

Basis for Relief

19. As noted above, the Claims Objection Deadline and the Administrative Claims Objection Deadline are currently set for **September 26, 2019**. Section XIV(E) of the Plan provides that the “the Claims Objection Deadline may be extended by the Court upon motion and notice. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Persons or Entities that have requested notice in the Chapter 11 Case in accordance with Bankruptcy Rule 2002.”

20. Moreover, the Court may extend the Claims Objection Deadline and the Administrative Claims Objection Deadline pursuant to Bankruptcy Rule 9006(b)(1), which provides as follows:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(b)(1).

21. Over 2,400 claims have been filed in this case. While the vast majority of those claims have been resolved, some of the claims are complex and/or related to other matters that are ongoing in the bankruptcy case. In particular, there were two separate WARN actions pending – one in this case and another involving the Debtor pending in the Superior Court of California since 2015 (the “State WARN Litigation”). It is the Liquidating Trustee’s understanding that the parties to the WARN action in this case reached a settlement in February 2018 and settlement payments have been authorized and were ready to be distributed pending resolution of the State WARN Litigation. The State WARN litigation was dismissed on October 3, 2018 and distributions were made in December of 2018.

22. In addition to the WARN Litigation, approximately 125 proofs of claim were filed in the Bankruptcy Court alleging a violation of WARN, failure to provide sufficient notice of the shutdown of the Debtor's operations and/or failure to pay required severance, including three class proofs of claim. In total, roughly 213 individual employee claims are asserted. And in certain cases, there is overlap between these claims and the claims asserted and resolved in the WARN Litigation.

23. Following the conclusion of the WARN Litigation, the Liquidating Trustee turned his attention to the various outstanding claims related to the WARN Litigation but that were not resolved pursuant thereto. The settlement payments made in connection with the WARN Litigation eliminated numerous claims against the Debtor's estate. The Trustee filed an omnibus objection to the 213 employee claims on April 11, 2019 [D.I. No.'s 2520 and 2528].

24. The Trustee believes that with the filing of this most recent omnibus objections, all claim objections have been filed. The Trustee has recently identified a small number of claims (less than 10) that may require an objection to resolve. The trustee continues to work on resolving these objections but the majority of these claims require further work. In the interest of caution, the Liquidating Trustee reserves all rights to seek further extensions of the Claims Objection Deadline and the Administrative Claims Objection Deadline.

25. Based on the foregoing, the Liquidating Trustee believes that adequate cause exists to extend the Claims Objection Deadline and the Administrative Claims Objection Deadline as requested herein.

Notice

26. Notice of this Motion has been provided to the United States Trustee and all parties requesting notices pursuant to Bankruptcy Rule 2002. The Liquidating Trustee submits that under the circumstances no other or further notice is necessary.

WHEREFORE, the Liquidating Trustee respectfully requests entry of an order (i) extending the Claims Objection Deadline and the Administrative Claims Objection Deadline by ninety (90) days through and including Thursday, **December 26, 2019**, without prejudice to the Liquidating Trustee's right to seek further extension of the Claims Objection Deadline and (iii) such other and further relief as the Court deems just and proper.

Dated: September 10, 2019

FOX ROTHSCHILD LLP

By: /s/ Mette H. Kurth
Mette H. Kurth (DE No. 6491)
919 North Market Street, Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
Facsimile: (302) 656-8920

Counsel to the Liquidating Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Fresh & Easy, LLC,

Debtor.

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) **Objections Due: October 1, 2019 at 4:00 p.m. ET**
) **Hearing Date: To be determined**

**NOTICE OF LIQUIDATING TRUSTEE'S EIGHTH MOTION FOR AN ORDER
EXTENDING THE DEADLINE FOR THE FILING OF OBJECTIONS TO CLAIMS,
INCLUDING ADMINISTRATIVE CLAIMS**

TO: The United States Trustee and all parties requesting notices pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that Peter S. Kravitz as Liquidating Trustee of the Fresh & Easy Liquidating Trust has filed the attached *Liquidating Trustee's Eighth Motion for an Order Extending the Deadline for the Filing of Objections to Claims, Including Administrative Claims* (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, are to be filed on or before **October 1, 2019 at 4:00 p.m. (Prevailing Eastern Time)**. At the same time, you must serve a copy of the objection or response on the undersigned attorneys for the Liquidating Trustee **and** the United States Trustee of the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Hannah Mufson McCollum, Esq.

PLEASE TAKE FURTHER NOTICE that if any responses are timely filed in accordance with this Notice, a hearing on the Motion will be held on **a date to be determined** before The Honorable Brendan L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 10, 2019

FOX ROTHSCHILD LLP

By: /s/ Mette H. Kurth
Mette H. Kurth, Esq. (DE No. 6491)
919 North Market Street, Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
Facsimile: (302) 656-8920
Counsel to the Liquidating Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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Fresh & Easy, LLC,

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) Chapter 11

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) Case No. 15-12220 (BLS)

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) **Related to Docket No. 2533**

)

**EIGHTH ORDER FURTHER EXTENDING THE DEADLINE FOR THE FILING OF
OBJECTIONS TO CLAIMS, INCLUDING ADMINISTRATIVE CLAIMS**

Upon the motion (the “Motion”) of Peter S. Kravitz as Liquidating Trustee of the Fresh & Easy Liquidating Trust (the “Liquidating Trustee”) for entry of an order extending by ninety (90) days the **September 26, 2019** deadline to file objections to claims (the “Claims Objection Deadline”) and objections to administrative claims (the “Administrative Claims Objection Deadline”); and it appearing that the Court has jurisdiction over this matter; and it appearing that notice of the Motion as set forth therein is sufficient, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion be, and hereby is, GRANTED; and it is further

ORDERED that the Claims Objection Deadline and the Administrative Claims Objection Deadline are hereby extended to and including Thursday, **December 26, 2019**, without prejudice to the Liquidating Trustee’s right to seek further extensions; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

The Honorable Brendan L. Shannon
UNITED STATES BANKRUPTCY JUDGE