

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

AMERICAN BLUE RIBBON HOLDINGS, LLC,
a Delaware limited liability company, *et al.*,¹

Reorganized Debtors.

Chapter 11

Case No.: 20-10161 (LSS)

(Jointly Administered)

Obj. Deadline: Sept. 27, 2021 at 4:00 p.m. (ET)

Hearing Date: Oct. 4, 2021 at 10:00 a.m. (ET)

**REORGANIZED DEBTORS' MOTION FOR ENTRY OF A
FINAL DECREE (I) CLOSING THE REMAINING CASE; (II) DISCHARGING
THE PLAN ADMINISTRATOR; (III) TERMINATING THE SERVICES
OF EPIQ CORPORATE RESTRUCTURING, LLC AS CLAIMS AND
NOTICING AGENT; AND (IV) GRANTING RELATED RELIEF**

The Reorganized Debtors² (and, before the effective date of the Plan, the “Debtors”) in the above-captioned jointly administered chapter 11 cases, by and through their undersigned counsel hereby submit this motion (the “Motion”), pursuant to sections 105 and 350(a) of title 11 of the United States Code (the “Bankruptcy Code”), section 156(c) of title 28 of the United States Code, Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3022-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of a final decree and order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), (i) closing the Debtors’ remaining chapter 11 case; (ii) discharging the Plan Administrator from any further duties in these cases and under the Plan; (iii) terminating the services of Epiq Corporate Restructuring,

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: American Blue Ribbon Holdings, LLC (1224-Del.); Legendary Baking, LLC (2615-Del.); Legendary Baking Holdings, LLC (2790-Del.); Legendary Baking of California, LLC (1760-Del.); and SVCC, LLC (9984-Ariz.). The Debtors’ address is 3038 Sidco Drive, Nashville, TN 37204.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Second Amended Combined Disclosure Statement and Chapter 11 Plan of Reorganization* [D.I. 543] (the “Plan”).

LLC (“Epiq”) as claims and noticing agent in these cases; and (iv) granting related relief. In support of this Motion, the Reorganized Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2), and pursuant to Local Rule 9013-1(f), the Reorganized Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief sought herein are sections 105 and 350(a) of the Bankruptcy Code, section 156(c) of title 28 of the United States Code, Federal Rule of Bankruptcy Procedure 3022, and Local Rule 3022-1.

BACKGROUND

A. Case Background

3. On January 27, 2020 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. From the Petition Date through the Effective Date (as defined below) of the Plan, the Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On February 6, 2020, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in these Cases. [D.I. 89].

5. On August 4, 2020, the Debtors filed the Plan. On September 16, 2020, the Court entered an order confirming the Plan [D.I. 650] (the “Confirmation Order”) and the Plan became effective on October 2, 2020 (the “Effective Date”).

6. The Confirmation Order and Article X.1 of the Plan provide for limited substantive consolidation of the Debtors’ estates for, *inter alia*, Distributions to Holders of Allowed Claims. The Plan also provides for the establishment of the GUC Trust Account on the Effective Date.

7. On the Effective Date, in accordance with Article IX.B of the Plan, the Reorganized Debtors were granted the authority to file objections to claims, or otherwise compromise, settle, or otherwise resolve any and all claims without approval of the Court.

8. Pursuant to Article IX.F of the Plan, the Plan Administrator was retained by the Reorganized Debtors for the sole purpose of overseeing the claims reconciliation process and to ensure that the GUC Plan Consideration is timely paid by the Reorganized Debtors to the Holders of Allowed General Unsecured Claims.

9. On January 5, 2021, the Court entered the *Order and Final Decree Closing Chapter 11 Cases of Non-Lead Debtors* [D.I. 776], which provides, among other things, that the cases of the Non-Lead Debtors (as defined therein) shall be closed and that the assets and liabilities of the Non-Lead Debtors shall remain consolidated as set forth in the Plan and be administered by the Reorganized Debtors in the chapter 11 case of American Blue Ribbon Holdings, LLC, Case No. 10161 (LSS).

10. The detailed factual background relating to the Debtors and the commencement of these Cases is set forth in the *Declaration of Kurt Schnaubelt in Support of First Day Motions* [D.I. 14] (the “First Day Declaration”).

B. Relevant Background

11. Prior and subsequent to the Effective Date, the Debtors and the Reorganized Debtors, as applicable, diligently reviewed the Debtors' books and records and analyzed the proofs of claim filed in these Chapter 11 cases against the Debtors' estates. As a result of these efforts, the Debtors, prior to the Effective Date, and the Reorganized Debtors, subsequent to the Effective Date, filed and successfully prosecuted a total of thirteen (13) omnibus claim objections and four (4) motions to reflect that certain claims were partially or fully satisfied.

12. As of the filing of this Motion, in accordance with the terms of the Plan, the Reorganized Debtors have made the first three quarterly distributions to Holders of Allowed General Unsecured Claims. Furthermore, the Reorganized Debtors have made, or are in the process of making, the final distribution to Holders of Allowed General Unsecured Claims. The Reorganized Debtors do not believe that there are any remaining Disputed Claims with the exception of: (i) a handful of property tax claims that have already, or will be, paid in the ordinary course of business (*i.e.*, not from the GUC Trust Account), including a personal property tax claim by the County of Orange, one final installment of property taxes for the Legendary Baking plant that is not payable until October 15, 2021; (ii) a workers' compensation claim for which the Reorganized Debtors have reached an agreement in principle and that will be paid in the ordinary course of business; and (iii) an unsecured personal injury claim that is being litigated in another forum and for which the Reorganized Debtors have established a distribution reserve for the remaining Self-Insured Retention ("SIR").³ Once liquidated or resolved in the state court, or otherwise, the Reorganized Debtors shall make a distribution to the claimant as a general unsecured claim asserted up to the remaining SIR based on the actual judgment, settlement, or

³ The Reorganized Debtors have served this Motion on each of the holders of the remaining Disputed Claims.

award. The Debtors' insurer shall only be liable for any amount of the judgment, settlement, or award in excess of the SIR amount.

13. The Reorganized Debtors believe that, as of the date hereof, all other motions, contested matters, and other proceedings that were before the Court with respect to these Chapter 11 cases have been resolved, or will be resolved, prior to the Court's consideration of this Motion.

14. The Plan has been fully consummated and implemented. The following events, among others have occurred under the Plan: (i) the Confirmation Order is final and non-appealable, (ii) all payments to be made pursuant to the Plan have been, or will be within thirty (30) days of entry of the Proposed Order, paid or provided for as set forth in the Plan, (iii) all claims have been satisfied, expunged, withdrawn or otherwise resolved, or a distribution reserve has been established, (iv) all contested matters, adversary proceedings, uncontested matters, and motions have been resolved, or will be resolved as of the entry of the Proposed Order, and (v) the Plan has been substantially consummated within the meaning of section 1101(2) of the Bankruptcy Code.

15. The quarterly fees of the Office of the United States Trustee (the "U.S. Trustee") have been paid for all quarters through June 30, 2021. The Reorganized Debtors anticipate that upon review of the final report to be filed pursuant to Local Rule 3022-1(c) no later than fourteen (14) days prior to the hearing on the Motion, the U.S. Trustee will notify counsel to the Reorganized Debtors of the amount due for current quarter through the closing of the case and those amounts will be promptly paid within thirty (30) days of entry of the order approving the Motion.

RELIEF REQUESTED

16. By this Motion, the Reorganized Debtors seek the entry of the Proposed Order issuing a final decree and (i) closing the chapter 11 case of American Blue Ribbon Holdings, LLC; (ii) discharging the Plan Administrator from any further duties in this case and under the Plan;

(iii) terminating the services of Epiq as claims and noticing agent in these cases; and (iv) granting related relief closing the remaining chapter 11 case.

BASIS FOR RELIEF

A. Final Decree Closing the Remaining Chapter 11 Case

17. Section 350(a) of the Bankruptcy Code provides that a case shall be closed “[a]fter an estate is fully administered and the court has discharged the trustee.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350(a) of the Bankruptcy Code, further provides that “[a]fter an estate is fully administered in a chapter 11 reorganization, the court, on its own motion or on motion of party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Further, Local Rule 3022-1 provides in pertinent part that, “[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Del. Bankr. L.R. 3022-1(a).

18. The term “fully administered” is not defined in either the Bankruptcy Code or the Bankruptcy Rules. The Advisory Committee Note to Bankruptcy Rule 3022, however, sets forth the following non-exclusive factors to be considered in determining whether a case has been fully administered:

- a) whether the order confirming the plan has become final;
- b) whether deposits required by the plan have been distributed;
- c) whether the property proposed by the plan to be transferred has been transferred;
- d) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property dealt with by the plan;
- e) whether payments under the plan have commenced; and

- f) whether all motions, contested matters, and adversary proceedings have been finally resolved.

1991 Advisory Comm. Note to Fed. R. Bankr. P. 3022.

19. In this district, “these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before a case is closed.” *In re SLI Inc., et al.*, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768–69 (Bankr. N.D. Ill. 1990)); *see also In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (recognizing that bankruptcy courts weigh the factors contained in the Advisory Committee Note when deciding whether to close a case); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997) (same); *Walnut Assocs. v. Sidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (“[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree.”). Further, “bankruptcy courts have flexibility in determining whether an estate is fully administered by considering the factors set forth in Rule 3022, along with any other relevant factors.” *Nesselrode v. Provident Fin., Inc. (In re Provident Fin., Inc.)*, Case No. 09-61756 WL 6259973, at *9 (9th Cir. BAP Oct. 12, 2010).

20. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the plan of reorganization has been substantially consummated. *See, e.g., In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case); *Walnut Assocs.*, 164 B.R. at 493 (same).

21. The Reorganized Debtors submit that the Chapter 11 cases have been “fully administered” within the meaning of section 350 of the Bankruptcy Code and the Plan has been substantially consummated within the meaning of section 1101(2) of the Bankruptcy Code, making it appropriate for the Court to enter the Proposed Order closing the remaining Chapter 11 case.

22. Among other things, (i) the Plan has been confirmed and become effective; (ii) the Confirmation Order has become final and non-appealable; (iii) the Debtors have emerged from their chapter 11 proceedings as reorganized entities; (iv) amounts reserved under the Plan have been paid, will be paid, or will be otherwise provided/reserved for within 30 days of entry of the Proposed Order; (v) the Reorganized Debtors have assumed the business and management of the property dealt with by the Plan; (vi) the Reorganized Debtors have made the first three quarterly distributions and are in the process of making the final distribution to the Holders of Allowed General Unsecured Claims; (vii) the Reorganized Debtors have established a distribution reserve, as necessary, which reserved amounts can be distributed upon the liquidation of the applicable Disputed Claim(s) without the need for oversight by the Court; (viii) all filings and payments payable to the U.S. Trustee's Office will have been made and provided for; and (ix) the Reorganized Debtors have completed all of its material tasks as provided in the Plan, and therefore no purpose is served by the Debtors' remaining chapter 11 case staying open.

23. Moreover, bankruptcy courts in this district have entered final decrees and closed cases despite certain claims being left unresolved. *See e.g., In re Sorenson Communications, Inc.*, Case No. 14-10454 (BLS) (July 29, 2014); *In re Dex Once Corporation*, Case No. 13-10533 (KG) (Sept. 11, 2013); *In re Appleseed Intermediate Holdings LLC*, Case No. 11-10160 (KG) (Mar. 28, 2012). Here, the Reorganized Debtors respectfully submit that entry of the Proposed Order is appropriate under the circumstances, given that the remaining Disputed Claims can all be resolved in the ordinary course of business without the need for further adjudication or will be liquidated in another forum and the Reorganized Debtors have established a distribution reserve as necessary to be paid pursuant to the terms of the Plan upon the liquidation of those claims. Once liquidated or resolved in the state court, or otherwise, the Reorganized Debtors shall use the distribution reserve

to make a distribution based on a general unsecured claim amount up to the remaining SIR based on the actual judgment, settlement, or award. The Reorganized Debtors' insurer shall only be liable for any amount of the judgment, settlement, or award in excess of the SIR amount.

24. The Court's consideration is no longer required in the Debtors' remaining case, as the Plan has been substantially consummated and the chapter 11 cases have been fully administered. The entry of a final decree closing the case will (a) be without prejudice to creditors' rights to petition the Court to reopen any of the chapter 11 cases pursuant to section 350(b) of the Bankruptcy Code and (b) stop the accrual of unnecessary and costly administrative expenses and U.S. Trustee fees.

25. For these reasons, the Reorganized Debtors submit that the Court should enter a final decree closing the remaining chapter 11 case.

B. Discharge of Plan Administrator's Responsibilities Under the Plan

26. The Reorganized Debtors request that the Plan Administrator be released and discharged from any further responsibility in these chapter 11 cases or under the Plan. As noted, the Reorganized Debtors have completed all material tasks and fulfilled all of their duties as required under the Plan, including distribution of substantially all of the GUC Plan Consideration. Article IX.F. of the Plan provides that "[t]he Plan Administrator shall continue to be retained until the Reorganized Debtors have resolved all Disputed General Unsecured Claims and the GUC Plan Consideration is paid to the Holders of Allowed General Unsecured Claims." As set forth herein, the Reorganized Debtors have made the first three quarterly distributions and are in the process of making the final distribution to the Holders of Allowed General Unsecured Claims. The Reorganized Debtors notified the Plan Administrator of the relief requested in this Motion and the Plan Administrator has no objection to entry of the Proposed Order.

C. Termination of Epiq as Claims and Noticing Agent

27. In addition, the Reorganized Debtors request that this Court terminate the engagement of Epiq, which was approved pursuant to the *Order Appointing Epiq Corporate Restructuring, LLC as Claims and Notices Agent Effective as of the Petition Date* [D.I. 36]. Upon termination, and except as otherwise provided herein, Epiq shall have no further obligations to this Court, the Debtors or Reorganized Debtors, as applicable, or any party in interest with respect to Epiq's engagement as the claims and noticing agent in these chapter 11 cases.

28. Pursuant to Local Rule 2002-l(f)(ix), within thirty (30) days of entry of the Proposed Order, Epiq shall (a) forward to the Clerk an electronic version of all imaged Claims; (b) upload the creditor mailing list into CM/ECF, and (c) docket a final claims register. Epiq shall further box and transport all original filed Claims to the Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, Pennsylvania 19154 and docket a completed SF- 135 Form indicating the accession and location numbers of the archived Claims.

FINAL REPORT

29. In accordance with Local Rule 3022-l(c), a final report that describes, among other things, the fees and expenses awarded to the retained professionals who rendered services during the pendency of the chapter 11 cases, and the distributions made under the Plan will be filed no later than fourteen (14) days prior to the hearing on the Motion.

RESERVATION OF RIGHTS

30. Although the Reorganized Debtors anticipate having all necessary matters resolved or reserved for by the hearing on this Motion, the Reorganized Debtors reserve the right to seek an adjournment of the hearing on this Motion. In the event that the Reorganized Debtors seek such an adjournment, it will be noted on the notice of agenda for the hearing, and such agenda will be

served on all parties served with this Motion. The Reorganized Debtors further reserve the right to reopen the chapter 11 case as needed.

NOTICE

31. Notice of this Motion has been provided to (i) the U.S. Trustee, (ii) the holders of any remaining Disputed Claims, and (iii) all other parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Reorganized Debtors submit that no further notice is necessary.

CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully request entry of the Proposed Order, (i) closing the remaining chapter 11 case; (ii) discharging the Plan Administrator from any further duties in this case and under the Plan; (iii) terminating the services of Epiq as claims and noticing agent in these cases; and (iv) granting such other and further relief as the Court may deem proper.

Dated: September 13, 2021
Wilmington, Delaware

BAYARD, P.A.

/s/ Gregory J. Flasser

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