

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and paragraph 34 of the Confirmation Order (defined below). Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).³

2. The predicates for the relief requested herein are sections 105 and 502 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3007 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 3007-1 of the Local Rules, paragraph 21 of the Confirmation Order, and Article IX.F of the Plan.

BACKGROUND

A. General Background

3. On September 9, 2019 (the “Petition Date”), each of the Debtors filed voluntary petitions with this Court pursuant to chapter 11 of the Bankruptcy Code (“Chapter 11 Cases”).

4. On September 18, 2019 the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 127].

5. On January 21, 2020, the Debtors filed the *Proposed Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to the Debtors’ Joint Plan* [Docket No. 756] (as modified and amended, the “Disclosure Statement”).

³ Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Liquidating Trustee consents to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. On June 4, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Modified Amended Joint Chapter 11 Plan of Fred's, Inc. and the Debtor Affiliate Set Forth Herein* [Docket No. 1162] (the "Confirmation Order").

7. On June 19, 2020, the *Notice of Confirmation and Occurrence of Effective Date of (I) Modified Amended Joint Chapter 11 Plan of Fred's Inc. and the Debtor Affiliates Set Forth Herein; and (II) Bar Dates for Certain Claims* [Docket No. 1199] (the "Notice of Effective Date") was filed.

8. Paragraph 21 of the Confirmation Order provides that "[t]he deadline for objecting to a Claim... shall be 120 days after the Effective Date; provided, however, that the Debtors or the Liquidating Trustee may seek extensions of this date from the Bankruptcy Court, with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002." Thus, the original Claims Objection deadline was October 17, 2020. Confirmation Order ¶ 21; *see also*, Plan Article IX.F.

9. Pursuant to Article XI.F of the Plan, "[i]f the Debtors or the Liquidating Trustee, as applicable, file a motion to extend the Claims Objection Deadline, the Claims Objection Deadline shall be automatically extended until the Bankruptcy Court acts on such motion, without the necessity for the entry of a bridge order." Plan, Art. XI.F.

10. On November 2, 2020, the Court entered the *Order Extending the Claims Objection Deadline* [Docket No. 1297], which extended the Claims Objection Deadline through and including April 15, 2021, without prejudice to the rights of the Liquidating Trustee to seek further extensions of the Claims Objection Deadline.

11. On March 31, 2021, the Court entered the *Second Order Extending the Claims Objection Deadline* [Docket No. 1353], which extended the Claims Objection Deadline through

and including October 12, 2021 (the “Current Claims Objection Deadline”), without prejudice to the rights of the Liquidating Trustee to seek further extensions of the Claims Objection Deadline.

RELIEF REQUESTED

12. By this Motion, the Liquidating Trustee seeks entry of an order, pursuant to Section 105 of the Bankruptcy Code, Bankruptcy Rule 9006, paragraph 21 of the Confirmation Order, and Article IX.F of the Plan extending the Claims Objection Deadline by 181 days through and including April 11, 2022.

BASIS FOR RELIEF

13. As stated above, the Plan authorizes the Liquidating Trustee, in his discretion, to move to extend the Claims Objection Deadline for cause. *See* Plan Art. IX.F. In addition, Bankruptcy Rule 9006(b)(1) provides that the Court can extend unexpired time periods, as follows:

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 . . . 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).⁴ As discussed below, good and sufficient cause exists to extend the Claims Objection Deadline.

14. Immediately following the Effective Date, the Liquidating Trustee began to identify and resolve pending issues and claims. Of note, within the first month of the Effective Date, the Trust successfully resolved the *Motion to Compel the Sale of the De Minimis Property*, concerning the disposition of property owned by the two Excluded Debtors. [Docket No. 1195]. By entering into deeds in lieu of foreclosure, the quickest and most cost-effective way to dispose

⁴ Pursuant to Rule 9006-2 of the Local Rules, the filing of this Motion prior to the Current Claims Objection Deadline serves to extend automatically the Current Claims Objection Deadline until such time as the Court rules on this Motion. *See* Del. Bankr. LR 9006-2.

of the properties, the Liquidating Trustee handled the issue with minimal cost to the estates, while also securing agreements from the lenders/mortgagees for each of the subject properties to waive any associated claims.

15. The Trust also began duly evaluating various tax claims, professional fee claims, and claims for payment of administrative expense. Since that time, the Trust has been working diligently to determine the validity of ad valorem tax liens and claims asserted against the Debtors by at most fifteen different state-level and possibly over 500 county-level taxing jurisdictions, which appear to be multiple millions of dollars more than set forth by the Debtors' advisors in the Disclosure Statement and the Plan.

16. Due to the aforementioned ad valorem tax issues, the claims reconciliation process is still very much in its infancy. Accordingly, the Liquidating Trustee anticipates requiring additional time to file claim objections, and does not believe he will be able to do so prior to the expiration of the Current Claims Objection Deadline. The Liquidating Trustee therefore requests additional time to object to claims so that the Trust may continue the claims reconciliation process and preserve value for distribution to stakeholders.

17. For the above reasons, the Liquidating Trustee believes that a 181-day extension of the deadline to file and serve objections to claims, through and including April 11, 2022 is necessary and appropriate. Similar relief to that requested herein has been granted in this District. *See, e.g., In re QCE Finance, LLC*, Case No. 14-10543 (LSS) (Bankr. D. Del. Mar. 13, 2015) [D.I. 645] (extending claim objection deadline by 120 days); *In re Savient Pharmaceuticals, Inc.*, Case No. 13-12680 (MFW) (Bankr. D. Del. Mar. 9, 2015) [D.I. 852] (extending claim objection deadline by 122 days); *In re EGHI Holdings, Inc.*, Case No. 09-12099 (MFW) (Bankr. D. Del. Mar. 3, 2015) [D.I. 2398] (extending claim objection deadline by 122 days); *In re Laboratory*

Partners, Inc., Case No. 13-12769 (LSS) (Bankr. D. Del. Jan. 28, 2015) [D.I. 777] (extending claim objection deadline by 180 days).

18. This extension is not sought for the purposes of delay and will not prejudice any claimants. The Liquidating Trustee reserves his right to seek a further extension of the time to file and serve objections to claims upon motion filed with the Court.

RESERVATION OF RIGHTS

19. While the Liquidating Trustee, on behalf of the Trust will endeavor to resolve all of the remaining unresolved claims within the time of the requested extension, the Liquidating Trustee reserves all of their rights to seek further extensions of the Claims Objection Deadline, as appropriate.

NOTICE

20. Notice of this Motion will be provided to (a) the U.S. Trustee, and (b) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. The Trust respectfully submits that no further notice of this Motion is required.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, extending the Claims Objection Deadline through and including April 11, 2022, and granting such other and further relief as the Court may deem just and proper.

Dated: October 4, 2021
Wilmington, Delaware

/s/ Ericka F. Johnson

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