

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

In re:

EARTH FARE, INC., *et al.*,¹

Debtors.

) Chapter 11

) Case No. 20-10256 (KBO)

) (Jointly Administered)

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

) **Hearing Date: January 5, 2022 at 10:00 a.m. (ET)**

**DEBTORS' MOTION FOR FINAL DECREE AND ORDER PURSUANT TO
11 U.S.C. §§ 105 AND 350, FED. R. BANKR. P. 3022 AND LOCAL RULE 3022-1
CLOSING CHAPTER 11 CASES AND TERMINATING
CLAIMS AND NOTICING SERVICES**

Earth Fare, Inc. (“**Earth Fare**”) and EF Investment Holdings, Inc. (each, a “**Debtor**” and collectively, the “**Debtors**”) in the above-captioned chapter 11 cases hereby submit this motion (this “**Motion**”)² for entry of a final decree and order, substantially in the form attached hereto as Exhibit A (the “**Proposed Final Decree**”), pursuant to sections 105(a) and 350(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 3022-1(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), closing the Debtors’ chapter 11 cases (the “**Chapter 11 Cases**”) and terminating the claims and noticing services provided by Epiq Corporate Restructuring, LLC, the Debtors’ claims and noticing agent (“**Epiq**”). In support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Earth Fare, Inc. (3936) and EF Investment Holdings, Inc. (8084). The mailing address for each of the Debtors is P.O. Box 1389, Fletcher, North Carolina 28732.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan (as defined herein).

JURISDICTION

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. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, pursuant to Local Rule 9013-1(f), the 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 in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a) and 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1.

BACKGROUND

2. On February 4, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. From the Petition Date through the effective date of the *Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* (the “**Plan**”) (as otherwise amended in accordance with the terms thereof and the Confirmation Order (as defined below)), the Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On June 29, 2021, the Court entered an order [Docket No. 655] (the “**Confirmation Order**”) confirming the Plan. The Effective Date occurred on June 30, 2021. *See* Docket No. 657.

4. With one exception, as noted below, each of the Debtor’s professionals have filed a final fee application (collectively, the “**Final Fee Applications**”) [Docket Nos. 669 & 673], and

an omnibus order has been entered approving such Final Fee Applications.³ *See* Docket No. 679. Payments on account of the Final Fee Applications have been made by the Debtors.

5. The General Bar Date was August 24, 2020, the Professional Fee Claims Bar Date was July 21, 2021, and the Final Administrative Claims Bar Date was August 16, 2021. There are no pending contested matters of adversary proceedings remaining in the Chapter 11 Cases.

6. Accordingly, the Debtors submit that the Chapter 11 Cases have been fully administered, with no other pending proceedings that would preclude closing the Chapter 11 Cases at this time.

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of the Proposed Final Decree, substantially in the form attached hereto as Exhibit A, closing the Chapter 11 Cases and terminating the claims and noticing services provided by Epiq.

BASIS FOR RELIEF

8. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Finally, Local Rule 3022-1(a) provides 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

³ On December 6, 2021, A&G Realty Partners, LLC, filed its final fee application [Docket No. 699]. The Debtors anticipate that A&G’s final fee application will be resolved in advance of any hearing on this Motion.

administered provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Del. Bankr. L.R. 3022-1(a).

9. The Advisory Committee Notes to Bankruptcy Rule 3022 set 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 its successor has assumed the business or the 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.

10. Courts have adopted the view that “these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed.” *In re SLI, Inc.*, Case No. 02-12608 (WS), 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 Omega Optical, Inc.*, 476 B.R. 157, 167 (Bankr. E.D. Pa. 2012).

11. With respect to the Chapter 11 Cases, the factors set forth in the Advisory Committee Notes are either satisfied or inapplicable, demonstrating that the Chapter 11 Cases have been fully administered. Specifically, (a) the Confirmation Order has become final; (b) the Debtors have with minimal exceptions wound up the Debtors’ affairs; (c) all transfers of property, payments of claims, and other distributions by the Debtors required by the Plan to occur on the Effective Date did so occur; (d) the Debtors have no further material obligations under the Plan, other than final distributions of the balance of cash that is property of the estates that can be

disbursed to the First Lien Lenders; and (e) there are no further motions, contested matters, or adversary proceedings for the Debtors to resolve.

12. Given the foregoing, the Debtors have no need for the Chapter 11 Cases to remain open, and they should be closed immediately. The Court's supervision is no longer required in the Chapter 11 Cases because the Debtors are deemed to have implemented their dissolution in accordance with applicable law as of the Effective Date, *see* Confirmation Order, Art. VII ("After the Effective Date, the Debtors shall not engage in any business activities except to the extent necessary to preserve the value of their assets, wind up their business affairs, and distribute their assets in accordance with this Confirmation Order and the [Plan], and shall be deemed to have implemented their dissolution in accordance with applicable law as of the Effective Date."), and the Chapter 11 Cases have been fully administered.

13. The continuation of the Chapter 11 Cases would place an administrative and financial burden on the Debtors in the form of internal resources to monitor the Chapter 11 Cases, continued professional costs and United States Trustee ("**U.S. Trustee**") fees.

14. The Debtors are not aware of any prepetition claims that have not yet been resolved. Furthermore, the entry of a final decree closing the Chapter 11 Cases is without prejudice to the reopening of the Chapter 11 Cases pursuant to section 350(b) of the Bankruptcy Code.

15. All expenses arising from the administration of the Chapter 11 Cases, including court fees, U.S. Trustee fees, professional fees, and expenses, have been paid or will be paid in the amounts due and, to the extent applicable, approved by the Court as soon as reasonably practicable after the closure of the Chapter 11 Cases.

16. In addition to the foregoing, the Debtors also request that the Proposed Final Decree provide for termination of the claims agent and noticing services (the "**Claims and Noticing**

Services”) performed by Epiq pursuant to that certain *Order (I) Authorizing the Retention of Epiq Corporate Restructuring, LLC as the Claims and Noticing Agent to the Debtors, Effective Nunc Pro Tunc to the Petition Date, and (II) Granting Related Relief* (the “**Epiq 156(c) Order**”) [Docket No. 47] and the underlying services agreement. Upon termination, and except as otherwise provided herein, Epiq shall have no further obligations (arising out of the services agreement, the Epiq 156(c) Order or otherwise) to the Court, the Debtors, or any party in interest with respect to the official claims agent and noticing services in the Chapter 11 Cases. In accordance with Local Rule 2002-1(f)(ix), within twenty-eight (28) days of the entry of the Proposed Final Decree, Epiq shall: (i) forward to the Clerk of the Court an electronic version of all imaged claims; (ii) upload the creditor mailing list into CM/ECF; and (iii) docket a final claims register. Epiq shall further box and transport all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, Pennsylvania 19154, and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

17. Finally, in accordance with Local Rule 3022-1(c), the Debtors have attached their verified final report describing the fees and expenses awarded to the retained professionals who rendered services during the pendency of the chapter 11 cases (the “**Verified Final Report**”), attached hereto as Exhibit B. Subject to the Court’s review and approval of the Verified Final Report, the Court’s role in the administration of the Chapter 11 Cases is complete.

NOTICE

18. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware and (ii) all parties having filed requests for notice in the Chapter 11

Cases pursuant to Bankruptcy Rule 2002 and Local Rule 9013-1. The Debtors submit that, under the circumstances, no other or further notice is necessary.

WHEREFORE, the Debtors request entry of the Proposed Final Decree, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such further relief as the Court deems just and proper.

Dated: December 9, 2021
Wilmington, Delaware

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