



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 19, 2019


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
FRANKIE V'S KITCHEN, LLC.	§	Case No.: 19-31717
	§	
Debtor.	§	

ORDER GRANTING MOTION FOR ENTRY OF ORDER: (A) APPROVING THE DISCLOSURE STATEMENT IN SUPPORT OF THE PLAN OF LIQUIDATION, (B) SCHEDULING THE CONFIRMATION HEARING, (C) ESTABLISHING VOTING AND OBJECTION DEADLINES, AND (D) APPROVING BALLOTING, SOLICITATION, NOTICE AND VOTING PROCEDURES

Frankie V's Kitchen, LLC as debtor and debtor-in-possession (the "**Debtor**") filed its *Motion for Entry of an Order (A) Approving the Disclosure Statement In Support of the Plan of Liquidation, (B) Scheduling the Confirmation Hearing, (C) Establishing Voting and Objection Deadlines, and (D) Approving Balloting, Solicitation, Notice, and Voting Procedures* [Docket No. 160] (the "**Motion**")¹ seeking, among other things: (1) approval of the Disclosure Statement, (2)

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

the scheduling of the Confirmation Hearing, (3) establishment of voting and objection deadlines to the proposed Plan, and (d) approval of balloting, solicitation, notice, and voting procedures.

Having reviewed the Motion and all matters brought to the Court's attention at the hearing on September 19, 2019, which such hearing was conducted on an expedited basis appropriate under the circumstances, and after due deliberation and consideration, the Court finds and determines that it has jurisdiction and the venue is proper; that the relief requested in the Motion constitutes a core proceeding; notice was appropriate under the circumstances and no further notice is necessary; that the relief sought in the Motion is in the best interest of the Debtor, its estate, the creditors thereof, and all parties in interest; and that cause exists to grant the relief requested in the Motion to the extent set forth below.

IT IS THEREFORE ORDERED, AND NOTICE IS HEREBY GIVEN, THAT:

1. The Motion is **GRANTED** to the extent provided herein;
2. The Disclosure Statement filed on September 13, 2019 at Docket No. 175 is hereby **APPROVED** pursuant to 11 U.S.C. § 105(d)(2)(vi), Federal Rule of Bankruptcy Procedure Rule 9006(c), and Local Rule of Bankruptcy Procedure 3017;
3. The Debtor is hereby authorized to make technical, conforming, and other non-material changes to the Disclosure Statement prior to its transmittal to holders of Claims without the necessity of any further order of this Court;
4. The hearing to consider the confirmation of the Plan (the "**Confirmation Hearing**") is fixed and shall be held on **October 28, 2019, at 1:30 PM (CDT)** before the Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge, United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Earle Cabell Federal Building, 1100 Commerce St., Rm. 1254, Dallas, TX 75242-1496 (the "**Bankruptcy Court**"), which hearing may

be adjourned or continued to a different date without further notice other than notice given in open court at such hearing;

5. The proposed form of the ballot (the “**Ballot**”) attached to the Motion as **Exhibit A**, including the opt-out notice contained therein, is hereby approved for all purposes in connection with soliciting votes on the Plan;

6. The Debtor will accordingly serve as the party responsible for receiving completed Ballots, determining and tabulating votes on the Plan, and determining whether each particular Class of Claims under the Plan has accepted or rejected the Plan (subject to final determination by this Court at the Confirmation Hearing);

7. The deadline for the receipt of completed and duly-executed Ballots by the counsel to the Debtor is hereby fixed as **October 21, 2019, at 5:00 PM (CDT)** (the “**Voting Deadline**”). In the absence of entry of an order hereafter extending the Voting Deadline or otherwise permitting the late submission of a particular Ballot, all properly completed Ballots must be **actually received** by counsel to the Debtor by no later than the Voting Deadline in order for them to be deemed timely submitted, and counted. All completed Ballots shall be sent to counsel to the Debtor at:

**FOLEY GARDERE
FOLEY & LARDNER LLP**
2021 McKinney Ave., Suite 1600
Dallas, Texas 75201
Attn: Mark C. Moore

8. The deadline for filing and serving Objections to confirmation of the Plan is hereby fixed as **October 21, 2019, at 5:00 PM (CDT)** (the “**Confirmation Objection Deadline**”) pursuant to Federal Rule of Bankruptcy Procedure 3020(b)(1) and all comments or objections not timely filed and served by such deadline shall be deemed waived;

9. The record date for determining the identity of holders of claims entitled to vote on the Plan (the “**Record Date**”) is hereby established as September 30, 2019;

10. By no later than two (2) business days following the entry of this Order, the Debtor will cause to be mailed or otherwise delivered (subject to the exceptions set forth below) a copy of the following materials (collectively, the “**Solicitation Package**”) to each of the record holders of claims in Voting Classes, determined as of the date of entry of this Order, *provided however*, that the Debtor shall be authorized but not directed to deliver the materials below (except for the approved Ballot and Confirmation Hearing Notice) in an electronic format through the publication of same on a publicly available website, the address for which shall be provided to all record holders of claims in Voting Classes and/or other parties in interest, with such publication constituting adequate notice of the contents of the Solicitation Package:

- (i) The Disclosure Statement (with all exhibits, including the Plan);
- (ii) This Order;
- (iii) The approved Ballot;
- (iv) The Confirmation Hearing Notice (in the form filed at Docket No. 180 and approved by the Court); and
- (v) A pre-addressed return envelope for use in returning the completed Ballot(s) to counsel to the Debtor (the “**Return Envelope**”);

11. The Debtor’s compliance with the foregoing means of transmitting Solicitation Packages to holders of Claims and/or other parties in interest, including the publication of the Solicitation Package on a publicly available website as described in paragraph 10 above, will constitute adequate and proper notice of the Confirmation Hearing, the Voting Deadline, and the Confirmation Objection Deadline, consistent with the requirements of Fed. R. Bankr. P. 2002 and 3017;

12. The following procedures (collectively, the “**Voting Procedures**”) are hereby approved and shall apply to the determination and tabulation of votes on the Plan:

- i. With respect to a Claim as to which a proof of Claim has not been filed as of the Record Date, the voting amount of such Claim (subject to any applicable limitations set forth below) shall be equal to the amount listed, if any, in respect of such Claim in the Debtor's Schedules to the extent such Claim is not listed as contingent, unliquidated, undetermined or disputed. Such Claim shall be placed in the appropriate Class based upon the applicable Debtor's records and the classification scheme set forth in the Plan.
- ii. With respect to a proof of Claim which, according to the Clerk of the Bankruptcy Court's records, was not filed as of the Record Date and is not subject to the provisions of the immediately preceding paragraph, such Claim shall be provisionally disallowed for voting purposes.
- iii. With respect to a liquidated, non-contingent, undisputed Claim as to which (i) a proof of Claim has been filed as of the Record Date, (ii) a Claim has been listed in the Debtor's Schedules that conflicts in amount with such proof of Claim, and (iii) an objection has not been filed, the classification of such Claim shall be that specified in such proof of Claim shall be accorded one vote and assigned a value, for purposes of § 1126(c) of the Bankruptcy Code (subject to any applicable limitations set forth below), equal to the lesser of (x) the amount of such Claim as listed in the Debtor's Schedules and (y) the amount of the proof of Claim.
- iv. With respect to a liquidated, non-contingent, undisputed Claim as to which (i) a proof of Claim has been filed as of the Record Date, (ii) a Claim is not listed in the Debtor's Schedules that conflicts in amount with such proof of Claim, and (iii) an objection has not been filed, the classification of such Claim shall be that specified in such proof of Claim and that proof of Claim shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c), subject to any applicable limitations set forth below.
- v. With respect to a proof of Claim which is the subject of an objection Filed by a Debtor, the Claim represented by such proof of Claim shall be provisionally disallowed for voting purposes, except to the extent and in the manner that (i) the Debtor indicate in its objection the extent to which such Claim should be allowed; or (ii) the Bankruptcy Court otherwise orders.
- vi. A timely filed proof of Claim that is designated as wholly unliquidated or contingent shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c) of the Bankruptcy Code, unless the Claim is disputed as set forth in the immediately preceding paragraph.

- vii. With respect to a Claim that has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the amount and classification of such Claim shall be that set by the Bankruptcy Court.
- viii. With respect to a Claim, any portion of which is unliquidated, contingent or disputed, the holder of the Claim shall be entitled to vote that portion of the Claim that is liquidated, non-contingent and undisputed, subject to any limitations set forth herein and unless otherwise ordered by the Bankruptcy Court.
- ix. Holders of Claims shall not be entitled to vote Claims to the extent such Claims duplicate or have been superseded by other Claims of such holders of Claims.
- x. If the holder of a Claim submits more than one Ballot voting the same Claim or Interest prior to the deadline for submission of Ballots, the first of such Ballots filed (and only such Ballot) shall be counted in accordance with the Voting Procedures unless either (i) the Debtor consents to the filing and counting of a superseding Ballot, or (ii) the Bankruptcy Court, after notice and a hearing, orders otherwise.
- xi. The authority of the signatory of each Ballot to complete and execute such Ballot shall be presumed.
- xii. Any Ballot which is executed and returned, but does not indicate an acceptance or rejection of the applicable Plan, shall be deemed to be an acceptance of the Plan.
- xiii. Any Ballot that is not signed will not be counted.
- xiv. For the purpose of voting on the Plan, the Debtor will be deemed to be in constructive receipt of any Ballot timely delivered to any address designated for the receipt of Ballots cast in connection with the Plan.
- xv. Any Ballot received by the Debtor after the end of the Voting Period shall not be accepted or used by the Debtor in connection with the Debtor's request for Confirmation of the Plan unless the Debtor, in its sole discretion, consents to the counting of such Ballot or the Bankruptcy Court orders such Ballot to be counted.
- xvi. All Ballots must be cast using the Ballots distributed to the holders of Claims. Votes cast in any manner other than by using such Ballots will not be counted.

13. For those parties that file timely proofs of claim after September 20, 2019 but on or before the Record Date: (1) the notice requirement of Fed. R. Bankr. P. 2002(b)(2) is hereby shortened such that the Voting Deadline and the Confirmation Objection Deadline established in this Order apply consistently to all parties-in-interest and/or holders of Claims entitled to vote, and (2) the Debtor shall cause the Solicitation Package to be mailed or otherwise delivered within one (1) business day of the filing of such proof of claim consistent with the procedures set forth in paragraphs 10 of this Order, with such mailing or delivery, as applicable, constituting adequate and proper notice of the Confirmation Hearing, the Voting Deadline, and the Confirmation Objection Deadline, consistent with the requirements of Fed. R. Bankr. P. 2002 and 3017.

IT IS SO ORDERED.

###END OF ORDER###