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Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 16, 2019

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Attorneys for EB Holdings II, Inc.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

EB HOLDINGS II, INC.,

Debtor.

Case No.: BK-S-19-16364-MKN
Chapter 11

Date: October 10, 2019
Time: 1:30 p.m.

**ORDER (A) SETTING BAR DATE FOR FILING PROOFS OF CLAIM AND (B)
APPROVING NOTICE THEREOF**

EB Holdings II, Inc. ("Debtor"), debtor-in-possession, filed *Debtor's Motion for Entry of an Order (A) Setting Bar Date for Filing Proofs of Claim and (B) Approving Notice Thereof* (the "Motion"),¹ which came on for hearing before the above-captioned Court on October 10, 2019, at

¹ All undefined, capitalized terms shall have the meaning ascribed to them in the Motion.

1 1:30 p.m. All appearances were duly noted on the record at the hearing on the Motion.

2 The Court having reviewed the Application and all matters submitted therewith, *The United*
3 *States Objection to Debtor’s Motion to Set a Bar Date for Filing Proofs of Claim (ECF No. 16)*
4 [ECF No. 43], *The U.S. Trustee’s Omnibus Objection to Debtor’s First Day Motion* [ECF No.
5 46], Debtor’s omnibus reply thereto [ECF No. 56], and the joinder to Debtor’s reply [ECF No.
6 63]; notice of the Application having been proper; the Court having stated its findings of fact and
7 conclusions of law on the record at the hearing, which are incorporated herein by reference in
8 accordance with Rule 52 of the Federal Rules of Civil Procedure, made applicable pursuant to
9 Rule 9014 of the Federal Rules of Bankruptcy Procedure; and good cause appearing therefore,

10 **IT IS HEREBY ORDERED** that:

- 11 1. The Motion is GRANTED in its entirety.
- 12 2. The Bar Date Notice, attached hereto as **Exhibit “1,”** is approved;
- 13 3. The following procedures for filing Proofs of Claim are approved:
 - 14 (a) Unless otherwise provided herein, the General Bar Date shall be November 15,
 - 15 2019 at 11:59 p.m. (Pacific Time).
 - 16 (b) Unless otherwise provided herein, the Governmental Bar Date shall be March
 - 17 28, 2020 at 11:59 p.m. (Pacific Time). For the avoidance of doubt, the
 - 18 occurrence of the Governmental Bar Date on March 28, 2020 shall not preclude
 - 19 or interfere with the Debtor’s ability to close its Chapter 11 Case prior to March
 - 20 28, 2020 or the Bankruptcy Court’s retention of jurisdiction pursuant to the
 - 21 Plan.
 - 22 (c) Proofs of Claims must: (i) be written in the English language; (ii) be
 - 23 denominated in lawful currency of the United States as of the Petition Date; (iii)
 - 24 conform substantially to the Proof of Claim Form or the Official Bankruptcy
 - 25 Form No. 410 (“Official Form”); (iv) set forth with specificity the legal and
 - 26 factual basis for the alleged claim; (v) include supporting documentation or an
 - 27 explanation as to why such documentation is not available; and (vi) be signed
 - 28 by the claimant or, if the claimant is not an individual, by an authorized agent
 - of the claimant.
 - (d) Proofs of Claim shall be deemed timely filed only if the Proofs of Claim are
 - actually received by the Debtor’s [proposed] court approved claims agent,
 - Prime Clerk (“PC”), or by the Court, on or before the applicable Bar Date at –

27 ...

28 ...

1 i. If by hand delivery, overnight courier, or first class mail:

2 EB Holdings II, Inc. Claims Processing Center
3 c/o Prime Clerk LLC
4 850 3rd Avenue, Suite 412
5 Brooklyn, NY 11232

6 ii. If by electronic transmission through PC:

7 <https://cases.primeclerk.com/ebholdings/EPOC-Index>

8 iii. If by ECF:

9 <https://ecf.nvb.uscourts.gov/>

10 (e) Any person or entity (including, without limitation, individuals, partnerships,
11 corporations, joint ventures, trusts, and Governmental Units) that asserts a
12 claim that arises from the rejection of an executory contract or unexpired lease
13 must file a Proof of Claim based on such rejection by the later of (i) the
14 applicable Bar Date and (ii) the date that is thirty days following the entry of
15 the order approving such rejection, or be forever barred from doing so.

16 (f) Notwithstanding the foregoing, a party to an executory contract or unexpired
17 lease that asserts a claim on account of unpaid amounts accrued and outstanding
18 as of the Petition Date pursuant to such executory contract or unexpired lease
19 (other than a rejection damages claim) must file a Proof of Claim for such
20 amounts on or before the applicable Bar Date unless an exception identified in
21 paragraph (h) below applies.

22 (g) In the event that Debtor amends its Schedules to (a) designate a claim as
23 disputed, contingent, unliquidated, or undetermined, (b) change the amount of
24 a claim reflected therein, (c) change the classification of a claim reflected
25 therein, or (d) add a claim that was not listed on the Schedules, Debtor shall
26 notify the claimant of the amendment. The deadline for any holder of a claim
27 so designated, changed, or added to file a Proof of Claim on account of any
28 such claim is the later of (a) the applicable Bar Date, and (b) the date that is
thirty days after Debtor provides notice of the amendment.

(h) The following persons or entities are *not* required to file a Proof of Claim on or
before the applicable Bar Date, with respect to the claims described below:

i. any person or entity whose claim is listed on the Schedules and (i) whose
claim is not described thereon as “disputed,” “contingent,” or
“unliquidated,” (ii) who does not dispute the amount or classification of the
claim set forth in the Schedules, and (iii) who does not dispute that the claim
is an obligation of the specific Debtor against which the claim is listed on
the Schedules;

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- ii. the PIK Loan Agent or any holder of a PIK Loan Claim, with respect to any PIK Loan Claim;
- iii. any holder of EBT Minority Shareholder Claims;
- iv. any person or entity whose claim has been paid in full;
- v. any person or entity that holds an interest in Debtor, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; provided, however, that interest holders that wish to assert claims (as opposed to ownership interests) against Debtor that arise out of or relate to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies;
- vi. any holder of a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense;
- vii. any person or entity that holds a claim that has been allowed by an order of this Court entered on or before the applicable Bar Date;
- viii. any holder of a claim for which a separate deadline is fixed by this Court;
- ix. any holder of a claim who has already properly filed a Proof of Claim with the Clerk of the Court or PC against Debtor, utilizing a claim form which substantially conforms to the Proof of Claim Form or Official Form 410; or
- x. any person or entity that relies on the Schedules has the responsibility to determine that the claim is accurately listed in the Schedules.

4. Any holder of a Claim against Debtor that is required but fails to file a Proof of Claim in accordance with this Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined from asserting such Claim against Debtor and the estate (or filing a Proof of Claim with respect thereto), and Debtor and its estate, successors, and property shall be forever discharged from any and all indebtedness or liability with respect to such Claim, participate in any distribution in any Debtor’s Chapter 11 Case on account of such Claim, or receive further notices with respect to any of Debtor’s Chapter 11 Case;

5. Debtor and PC are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Bar Date Order;

1 6. Notice of the relief granted by this Bar Date Order as provided herein is fair and
2 reasonable and will provide good, sufficient, and proper notice to all creditors of their rights and
3 obligations in connection with Claims they may have against Debtor in this Chapter 11 Case;

4 7. Nothing in this Order shall prejudice the right of Debtor any other party in interest
5 to dispute or assert offsets or defenses to any claim reflected in the Schedules;

6 8. Entry of this Order is without prejudice to the right of the Debtor to seek a further
7 order of this Court fixing the date by which holders of Claims not subject to the Bar Dates
8 established herein must file such Claims against Debtor or be forever barred from doing so;

9 9. This Court shall retain jurisdiction to hear and determine all matters arising from
10 or related to this Order.

11 **IT IS SO ORDERED.**

12 PREPARED AND SUBMITTED:

13 GARMAN TURNER GORDON LLP

14
15 BY: /s/ Talitha Gray Kozlowski
16 GREGORY E. GARMAN, ESQ.
17 TALITHA GRAY KOZLOWSKI, ESQ.
18 TERESA PILATOWICZ, ESQ.
19 650 White Drive, Suite 100
20 Las Vegas, Nevada 89119
21 *Attorneys for EB Holdings II, Inc.*

APPROVED BY:

OFFICE OF THE UNITED STATES
TRUSTEE

BY: EDWARD McDONALD JR., ESQ.
300 Las Vegas Boulevard South
Suite 4300
Las Vegas, Nevada 89101

22 APPROVED:

23 RICHARD E. ZUCKERMAN
24 Principal Deputy Assistant Attorney General

25 By: BORIS KUKSO, ESQ.
26 Trial Attorney
27 U.S. Department of Justice, Tax Division
28 P.O. Box 683
Washington, D.C. 20044

Of Counsel
NICHOLAS A. TRUTANICH
Acting United States Attorney

1 6. Notice of the relief granted by this Bar Date Order as provided herein is fair and
2 reasonable and will provide good, sufficient, and proper notice to all creditors of their rights and
3 obligations in connection with Claims they may have against Debtor in this Chapter 11 Case;

4 7. Nothing in this Order shall prejudice the right of Debtor any other party in interest
5 to dispute or assert offsets or defenses to any claim reflected in the Schedules;

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7 order of this Court fixing the date by which holders of Claims not subject to the Bar Dates
8 established herein must file such Claims against Debtor or be forever barred from doing so;

9 9. This Court shall retain jurisdiction to hear and determine all matters arising from
10 or related to this Order.

11 **IT IS SO ORDERED.**

12 PREPARED AND SUBMITTED:

13 GARMAN TURNER GORDON LLP

14 BY:

15 GREGORY E. GARMAN, ESQ.
16 TALITHA GRAY KOZLOWSKI, ESQ.
17 TERESA PILATOWICZ, ESQ.
18 650 White Drive, Suite 100
19 Las Vegas, Nevada 89119
20 *Attorneys for EB Holdings II, Inc.*

21 APPROVED BY:

22 OFFICE OF THE UNITED STATES
23 TRUSTEE

24 BY: Edward McDonald Jr.
25 EDWARD McDONALD JR., ESQ.
26 300 Las Vegas Boulevard South
27 Suite 4300
28 Las Vegas, Nevada 89101

29 APPROVED:

30 RICHARD E. ZUCKERMAN
31 Principal Deputy Assistant Attorney General

32 By:

33 ~~BORIS BOURGET, ESQ.~~
34 Trial Attorney
35 U.S. Department of Justice, Tax Division
36 P.O. Box 683
37 Washington, D.C. 20044

38 BORIS KUKSO

39 Of Counsel
40 NICHOLAS A. TRUTANICH
41 Acting United States Attorney

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that (check one):

- The court waived the requirement of approval under LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Edward McDonald – Approved

Boris Kukso – Disapproved

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

###

EXHIBIT 1

EXHIBIT 1

1 GARMAN TURNER GORDON LLP
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2 Nevada Bar No. 6654
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3 TALITHA GRAY KOZLOWSKI, ESQ.
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7 650 White Drive, Suite 100
Las Vegas, Nevada 89119
8 Tel: (725) 777-3000
Attorneys for EB Holdings II, Inc.

10 **UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

11 In re:	Case No.: BK-S-19-16364-MKN
12	Chapter 11
13 EB HOLDINGS II, INC.,	
14 Debtor.	

15 **NOTICE OF BAR DATE FOR FILING PROOFS OF CLAIMS**

16 TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST EB HOLDINGS II,
17 INC:

18 Please take notice that, on October 10, 2019, the United States Bankruptcy Court for the
19 District of Nevada (the “Court”), having jurisdiction over the Chapter 11 Case of EB Holdings II,
20 Inc. (“Debtor”) entered an order (the “Bar Date Order”) establishing (i) **November 15, 2019 at
21 11:59 p.m. (Pacific Time)** as the last date and time for each person or entity (including, without
22 limitation, individuals, partnerships, corporations, joint ventures, and trusts) to file a proof of claim
23 (“Proof of Claim”) based on prepetition claims against Debtor (the “General Bar Date”); and (ii)
24 **March 28, 2020 at 11:59 p.m. (Pacific Time)** as the last date and time for each governmental unit
25 (as defined in section 101(27) of the Bankruptcy Code) to file a Proof of Claim based on prepetition
26 claims against Debtor (the “Governmental Bar Date” and, together with the General Bar Date, the
27 “Bar Dates”). The Bar Date Order, the Bar Dates, and the procedures set forth below for the filing
28

1 of Proofs of Claim apply to all claims against Debtor (other than those set forth below as being
2 specifically excluded) that arose prior to September 30, 2019, the date on which Debtor
3 commenced its case under chapter 11 of title 11 of the United States Code (the “Bankruptcy
4 Code”).

5 **1. WHO MUST FILE A PROOF OF CLAIM**

6 You MUST file a Proof of Claim to share in any distribution by Debtor if you have a claim
7 that occurred prior to September 30, 2019, and it is not one of the other types of claims described
8 in Section 2 below. Acts or omissions of Debtor that arose before September 30, 2019 may give
9 rise to claims against Debtor that must be filed by the applicable Bar Date, notwithstanding that
such claims may not have matured or become fixed or liquidated or certain prior to September 30,
2019.

10 Pursuant to section 101(5) of the Bankruptcy Code and as used in this Notice, the word
11 “claim” means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated,
12 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,
13 secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such
14 breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced
to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.
Further, claims include unsecured claims, secured claims, and priority claims.

15 **2. WHO NEED NOT FILE A PROOF OF CLAIM**

16 You need not file a Proof of Claim if:

- 17 i. any person or entity whose claim is listed on the Schedules and (i) whose claim is
18 not described thereon as “disputed,” “contingent,” or “unliquidated,” (ii) who does
19 not dispute the amount or classification of the claim set forth in the Schedules, and
20 (iii) who does not dispute that the claim is an obligation of the specific Debtor
21 against which the claim is listed on the Schedules;
- 22 ii. the PIK Loan Agent or any holder of a PIK Loan Claim, with respect to any PIK
23 Loan Claim;
- 24 iii. any holder of EBT Minority Shareholder Claims;
- 25 iv. any person or entity whose claim has been paid in full;
- 26 v. any person or entity that holds an interest in Debtor, which interest is based
27 exclusively upon the ownership of common or preferred stock, membership
28 interests, partnership interests, or warrants or rights to purchase, sell or subscribe
to such a security or interest; provided, however, that interest holders that wish to
assert claims (as opposed to ownership interests) against Debtor that arise out of or
relate to the ownership or purchase of an interest, including claims arising out of or
relating to the sale, issuance, or distribution of the interest, must file Proofs of Claim
on or before the applicable Bar Date, unless another exception identified herein

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applies;

- vi. any holder of a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense (other than a holder of a 503(b)(9) Claim);
- vii. any person or entity that holds a claim that has been allowed by an order of this Court entered on or before the applicable Bar Date;
- viii. any holder of a claim for which a separate deadline is fixed by this Court;
- ix. any holder of a claim who has already properly filed a Proof of Claim with the Clerk of the Court or PC against Debtor, utilizing a claim form which substantially conforms to the Proof of Claim Form or Official Form 410; or
- x. any person or entity that relies on the Schedules has the responsibility to determine that the claim is accurately listed in the Schedule.

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST DEBTOR. THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT DEBTOR OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

3. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you hold a claim arising from the rejection of an executory contract or unexpired lease, you must file a Proof of Claim based on such rejection by the later of (i) the applicable Bar Date, and (ii) the date which is thirty days following the entry of the order approving such rejection or you will be forever barred from doing so. Notwithstanding the foregoing, if you are a party to an executory contract or unexpired lease and you wish to assert a claim on account of unpaid amounts accrued and outstanding as of September 30, 2019 pursuant to that executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the applicable Bar Date unless an exception identified above applies.

4. WHEN AND WHERE TO FILE

All Proofs of Claim must be filed so as to be actually received on or before the applicable Bar Date at the following address:

If by overnight courier, hand delivery, or first class mail:

EB Holdings II, Inc. Claims Processing Center
c/o Prime Clerk LLC
850 3rd Avenue, Suite 412
Brooklyn, NY 11232

If by electronic transmission through PC:

<https://cases.primeclerk.com/ebholdings/EPOC-Index>

...

If by ECF:

<https://ecf.nvb.uscourts.gov/>

Proofs of Claim will be deemed timely filed only if actually received by PC or the Court on or before the applicable Bar Date.

5. WHAT TIO FILE.

If you file a Proof of Claim, your filed Proof of Claim must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States; (iii) conform substantially to Official Bankruptcy Form No. 410; (iv) set forth with specificity the legal and factual basis for the alleged claim; (v) include supporting documentation or an explanation as to why such documentation is not available; and (vi) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE APPLICABLE BAR DATE

Except with respect to claims of the type set forth in Section 2 above, any creditor who fails to file a Proof of Claim on or before the applicable Bar Date in the appropriate form in accordance with the procedures described in this Notice for any claim such creditor holds or wishes to assert against Debtor, will be forever barred, estopped and enjoined from asserting the claim against Debtor and its estate (or filing a Proof of Claim with respect to the claim), and Debtor and its estate, successors, and property will be forever discharged from any and all indebtedness or liability with respect to the claim, and the holder will not be permitted to participate in any distribution in Debtor’s Chapter 11 Case on account of the claim, or receive further notices with respect to the Chapter 11 Case.

If you have any questions relating to this Notice, please feel free to contact Prime Clerk at 877-482-7950 (domestic) or 917-947-0354 (international) or by e-mail at ebholdingsteam@PrimeClerk.com

YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE ANY OTHER QUESTIONS, INCLUDING WHETHER YOU SHOULD FILE A PROOF OF CLAIM.

Dated on this ____ day of October, 2019.

GARMAN TURNER GORDON LLP

By: /s/
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