

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
OLD FENM INC., <i>et al.</i> , ¹	:	Case No. 13-12569 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: Docket Nos. 728, 854 & 864

**NOTICE OF HEARING ON (I) CONFIRMATION OF JOINT
CHAPTER 11 PLAN OF REORGANIZATION AND (II) RELATED MATTERS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Plan and Disclosure Statement. On April 21, 2014, the above-captioned debtors (collectively, the "Debtors") filed the Joint Chapter 11 Plan of Reorganization of Old FENM Inc. and Old FEPC LLC, dated April 21, 2014 [Docket No. 728] (as it may be amended or modified, the "Plan") and on April 24, 2014, the Debtors filed the related Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code With Respect to the Joint Plan of Reorganization of Old FENM Inc. and Old FEPC LLC, dated April 24, 2014 (as it may be amended or modified, the "Disclosure Statement").²

2. Approval of Disclosure Statement. Pursuant to an order of the Court dated May 30, 2014 [Docket No. 864] (the "Disclosure Statement Order"), the Court approved the Disclosure Statement.

3. Confirmation Hearing. A hearing to consider the confirmation of the Plan (the "Confirmation Hearing") will be held before the Honorable Kevin J. Carey, United

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in brackets): Old FENM Inc. (f/k/a Fresh & Easy Neighborhood Market Inc.) [7028] and Old FEPC LLC (f/k/a Fresh & Easy Property Company LLC) [9636]. The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

States Bankruptcy Court Judge, in Courtroom 5 of the Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801 on July 2, 2014 at 9:00 a.m., Eastern Time. The Confirmation Hearing may be continued from time to time without further notice other than the announcement of the adjourned date(s) at the Confirmation Hearing or any continued hearing.

4. Objections to Confirmation of the Plan and Approval of Related Settlements. Responses and objections, if any, to the confirmation of the Plan, the approval of the related settlements provided for in the Plan, or the other relief sought by the Debtors in connection with the confirmation of the Plan, must (a) be in writing; (b) state the name and address of the objecting party and the nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection or response; and (d) **before 4:00 p.m. (Eastern Time) on June 25, 2014** (the "Confirmation Objection Deadline"), be filed, together with proof of service, with the Court and served on the following parties:

- the Debtors, Old FENM Inc., 2120 Park Place, Suite 200, El Segundo, California 90245, Facsimile: (301) 341-1501 (Attn: Mary Kasper);
- counsel to the Debtors, Jones Day, 222 East 41st Street, New York, New York 10017, Facsimile: (212) 755-7306 (Attn: Lisa Laukitis and Paul D. Leake) and Richards Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Facsimile: (302) 498-7838 (Attn: Mark D. Collins and John H. Knight);
- the Office of the United States Trustee, District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Facsimile: (302) 573-6497 (Attn: Tiiara Patton); and

- counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4100, Facsimile: (310) 201-0760 (Attn: Jeffrey Pomerantz) and 919 N. Market Street, 17th Floor, Wilmington, Delaware 19801, Facsimile: (302) 652-4400 (Attn: Bradford J. Sandler).

5. Notice of Non-Voting Status/No Distribution. The Plan renders all Classes of Claims unimpaired, meaning, among other things, that all holders of Allowed Claims will receive payment in full, in cash, under the terms of the Plan. Therefore, all Classes of Claims are conclusively presumed to accept the Plan in accordance with section 1126(f) of the Bankruptcy Code or the terms of the Plan, and the solicitation of votes on the Plan is unnecessary for all Classes of Claims. Holders of Interests in Class 5 will receive no distributions under the Plan on account of such Interests. Therefore, Class 5 is conclusively presumed to reject the Plan in accordance with section 1126(g) of the Bankruptcy Code, and the solicitation of votes on the Plan is unnecessary for Class 5.

6. Releases, Limitation of Liability and Injunctions. The Plan provides for certain releases by both the Debtors and their creditors, limitation of liability and injunctions as set forth below.

- a. Release of Claims and Liens.

General Releases by the Debtors: Without limiting any applicable provisions of, or releases contained in, the Sale Orders or the Plan, as of the Effective Date, the Debtors, on behalf of themselves, their Estates and their respective successors, assigns and any and all Entities who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all Causes of Action, including but not limited to any Chapter 5 Claims and Affiliate Causes of Action, arising prior to the Effective Date that such Entity has, had or may have against each of the Released Parties;³ provided, however, that the releases provided in this paragraph shall have no effect on: (a) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability

³ As set forth in the Plan, the "Released Parties" include, generally, the Debtors, Tesco and its non-Debtor Affiliates, the Creditors' Committee, and, in each case, as applicable, their present or former directors, officers, employees, members, subsidiaries, Affiliates, managers, agents, attorneys, representatives, professionals and advisors, in each case acting in such capacity.

under the Plan, or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan; or (b) the liability of any Entity that would otherwise result from any act, omission or occurrence since the Petition Date to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

Third Party Releases: Without limiting any other applicable provisions of, or releases contained in, the Plan or the Bankruptcy Code, as of the Effective Date, in consideration for the consideration provided to the Debtors by the Tesco Settlement and the payment in full and unimpairment of Allowed Secured Claims, Administrative Claims, Priority Tax Claims, Priority Claims and General Unsecured Claims, each holder of a Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim, and General Unsecured Claim shall be deemed to forever release, waive and discharge all Claims and Causes of Action in any way relating to any Debtor, the Reorganization Cases or the Plan that such Entity has, had or may have against any of the Released Parties (which release shall be in addition to the injunction of Claims provided herein and under the Confirmation Order and the Bankruptcy Code), excluding only any obligations of any of the Released Parties under the Plan.

Injunction Related to Releases: As further provided in Section IX.A of the Plan, the Confirmation Order will enjoin permanently the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released pursuant to the Plan, including, without limitation, the Chapter 5 Claims released pursuant to Section IV.A.2.c of the Plan.

Release of Liens: Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, on the Effective Date and consistent with the treatment provided for Claims and Interests in Article III of the Plan, all Liens on, in or against the Reorganized Debtors' Assets shall be fully released and discharged, and all of the right, title and interest of any holder of Liens, including any rights to any Collateral thereunder, shall revert to the Reorganized Debtors and their successors and assigns. As of the Effective Date, the Reorganized Debtors shall be authorized but not required to execute and file Form UCC-3 Termination Statements or such other forms as may be necessary or appropriate to implement the provisions of Section IV.F of the Plan.

b. Limitation of Liability.

Limitation of Liability: From and after the Effective Date, the Exculpated Parties⁴ shall neither have nor incur any liability to any Entity or be subject to any Cause of Action for any act taken or omitted to be taken in connection with, related to or arising out of the Bankruptcy Cases, the Debtors, their Estates or the consideration, formulation,

⁴ As set forth in the Plan, the "Exculpated Parties" are, generally, the Debtors, any Disbursing Agent (solely in such capacity), the Creditors' Committee and its members (solely in such capacity), Tesco and its non-Debtor Affiliates and the Representatives of the foregoing.

preparation, dissemination, implementation, Confirmation, consummation or administration of the Plan, the Disclosure Statement, the Sales, any Other Sales or any transaction proposed in connection with the Bankruptcy Cases or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection therewith; provided, however, that the provisions of Section IV.D.4 of the Plan shall have no effect on: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, or (ii) the liability of any Entity that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

b) Notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Exculpated Party for any act or omission in connection with, relating to or arising out of the Bankruptcy Cases, the Debtors, their Estates or the consideration, formulation, preparation, dissemination, implementation, Confirmation, consummation or administration of the Plan, the Disclosure Statement, the Sales, any Other Sales or any transaction or document created or entered into, or any other act taken or omitted to be taken, in connection therewith, except for: (i) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan, or (ii) the liability of any Entity that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct.

c. Injunctions.

Claims Enjoined: Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability that would be discharged upon Confirmation but for the provision of section 1141(d)(3) of the Bankruptcy Code or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan will be permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtors or the Reorganized Debtors, other than to enforce any right to receive a distribution under the Plan; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors or the Reorganized Debtors other than as permitted pursuant to (a) above; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtors or the Reorganized Debtors, their respective property; (d) asserting a setoff (except as otherwise permitted under the Plan) or a right of subrogation of any kind against any debt, liability or obligation due to the Debtors or the Reorganized Debtors; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

Enforcement Enjoined: Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that are released, waived, settled or deemed satisfied pursuant to the Plan will be permanently enjoined from taking any of the following actions against any released Entity or its property on account of such Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any Lien or encumbrance; (d) asserting a setoff (except as otherwise provided in Section IX.A.2 of the Plan) or a right of subrogation of any kind against any debt, liability or obligation due to any released Entity; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

Consent to Injunction: By accepting distributions pursuant to the Plan, each holder of an Allowed Claim that receives a distribution under the Plan will be deemed to have specifically consented to the injunctions set forth in Section IX.A of the Plan.

7. Assumption or Rejection of Executory Contracts and Unexpired Leases.

The Plan provides for the rejection of all prepetition executory contracts and unexpired leases not previously assumed or rejected by the Debtors, except for those set forth on Exhibit II to the Plan. Exhibit II to the Plan will be filed with the Court no later than 5 days prior to the Confirmation Objection Deadline and may be obtained on the website of the Debtors' voting agent at <http://cases.primeclerk.com/FreshAndEasy>. The Plan requests approval of certain procedures related to the assumption or rejection of certain prepetition executory contracts and unexpired leases, as described in greater detail in Article V of the Plan.

8. Plan Exhibits. The Debtors will file exhibits to the plan (the "Plan Exhibits") not less than 5 days before the Confirmation Objection Deadline. The Plan Exhibits are: Plan Exhibit I – Retained Causes of Action, Plan Exhibit II – Executory and Unexpired Leases to be Assumed, Plan Exhibit III – Reorganized Debtors' Organizational Documents and Plan Exhibit IV – Reorganized Debtors' Directors and Officers.

9. Copies of Plan, Disclosure Statement and Related Documents. Creditors whose claims were scheduled by the Debtors or who filed a proof of claim in the Debtors'

chapter 11 cases have a copy of the Plan and Disclosure Statement in CD-ROM format enclosed herewith. Otherwise, copies of the Plan, Disclosure Statement, Plan Exhibits and other related documents are available for review (a) at the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801; (b) **at no cost** on the website of the Debtors' claims agent, Prime Clerk, LLC, <http://cases.primeclerk.com/FreshAndEasy>; and (c) on the Bankruptcy Court's website (<http://www.deb.uscourts.gov>) by following the directions for accessing the ECF system on such website. In addition, copies of the Plan and Disclosure Statement may be obtained upon written request to Prime Clerk, LLC, Attn: Old FENM Inc. (13-12569), c/o Prime Clerk LLC, 830 3rd Avenue, 9th Floor, New York, New York 10022, Telephone: (855) 410-7361, freshandeasyinfo@primeclerk.com or to Jones Day, Attn: Justin Carroll, 222 East 41st Street, New York, New York 10017, Telephone: (212) 326-3939, jfcarroll@jonesday.com.

Dated: May 30, 2014

/s/ Amanda R. Steele

Mark D. Collins (DE 2981)

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