

EPICOR SOFTWARE CORP  
Form S-8  
June 29, 2009

As filed with the Securities and Exchange Commission on June 29, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**  
**Under**  
**THE SECURITIES ACT OF 1933**

**EPICOR SOFTWARE CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**18200 Von Karman Avenue, Suite 1000**

**33-0277592**  
(I.R.S. Employer  
Identification No.)

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Irvine, California

(949) 585-4000

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**Epicor Software Corporation 2007 Stock Incentive Plan**

(Full title of the plan)

**L. George Klaus, Chief Executive Officer**

**Epicor Software Corporation**

**18200 Von Karman Avenue, Suite 1000**

**Irvine, California**

**(949) 585-4000**

(Name, address, and telephone number, including area code, of agent for service)

*Copies to:*

**John D. Ireland, Esq.**

**Epicor Software Corporation**

**18200 Von Karman Avenue, Suite 1000**

**Irvine, California**

**(949) 585-4000**

**Katharine A. Martin, Esq.**

**Wilson Sonsini Goodrich & Rosati**

**Professional Corporation**

**650 Page Mill Road**

**Palo Alto, California 94304**

**(650) 493-9300**

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Accelerated filer   
Smaller reporting company

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**CALCULATION OF REGISTRATION FEE**

| <b>Title of securities<br/>to be registered</b>   | <b>Amount to be<br/>registered</b> | <b>Proposed</b>                                 | <b>Proposed</b>                                 | <b>Amount of<br/>registration fee</b> |
|---|------------------------------------|---|---|---------------------------------------|
|   |                                    | <b>maximum<br/>offering price<br/>per share</b> | <b>maximum<br/>aggregate<br/>offering price</b> |                                       |
| Common Stock, \$0.001 par value, to be issued under the Epicor Software Corporation 2007 Stock Incentive Plan (1) | 6,000,000(2)                       | \$4.93(3)                                       | \$29,580,000(3)                                 | \$1,650.57(4)                         |

- (1) The shares being registered hereby will be accompanied by the Registrant's Series A Junior Participating Preferred Stock Purchase Rights. Until the occurrence of certain prescribed events, such rights will not be exercisable, will be evidenced by the certificates representing the Registrant's Common Stock, and will attach to and trade only together with the Common Stock.
- (2) This Registration Statement shall also cover any additional shares of Registrant's Common Stock that become issuable under the Epicor Software Corporation 2007 Stock Incentive Plan, by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the Registrant's receipt of consideration that results in an increase in the number of the Registrant's outstanding shares of Common Stock.
- (3) Computed in accordance with Rules 457(c) and (h) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Select Market on June 26, 2009, which amount was \$4.93 per share.
- (4) Amount of the Registration Fee was calculated pursuant to Section 6(b) of the Securities Act of 1933, as amended, and was determined by multiplying the aggregate offering amount by 0.00005580.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents have been filed by Epicor Software Corporation (the Registrant) with the Securities and Exchange Commission (the Commission) and are incorporated by reference in this registration statement (this Registration Statement):

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the Commission on March 16, 2009;
  
- (b)(1) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, filed with the Commission on May 11, 2009;
  
- (b)(2) The Registrant's Current Report on Form 8-K filed with the Commission on January 5, 2009;
  
- (b)(3) The Registrant's Current Report on Form 8-K filed with the Commission on January 26, 2009;
  
- (b)(4) The Registrant's Current Report on Form 8-K filed with the Commission on February 6, 2009;
  
- (b)(5) The Registrant's Current Report on Form 8-K filed with the Commission on March 2, 2009;
  
- (b)(6) The Registrant's Current Report on Form 8-K filed with the Commission on March 18, 2009;
  
- (b)(7) The Registrant's Current Report on Form 8-K filed with the Commission on April 21, 2009;
  
- (b)(8) The Registrant's Current Report on Form 8-K filed with the Commission on May 27, 2009;
  
- (b)(9) The Registrant's Current Report on Form 8-K filed with the Commission on June 10, 2009;
  
- (c)(1) The description of the Registrant's Common Stock contained in its registration statement on Form 8-A, filed with the Commission on or about October 15, 1992, and any subsequent amendment and restatement or report filed with the Commission for the purposes of updating such description; and
  
- (c)(2) The description of the Registrant's Preferred Stock Purchase Rights contained in its registration statement on Form 8-A, filed with the Commission on April 14, 1994, as amended November 21, 2001, November 1, 2004 and March 2, 2009.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act ), prior to the filing of a post-effective amendment to the Registration Statement that indicates that all of the shares of Common Stock offered have been sold or that deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents. For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law authorizes a corporation to grant or a court to award indemnification to directors and officers in terms that are sufficiently broad to permit indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the Securities Act ). The Registrant's second restated certificate of incorporation, as amended, and the Registrant's amended and restated bylaws provide for indemnification of its directors, officers, employees and other agents to the maximum extent permitted by Delaware Law. The Registrant's amended and restated bylaws also provide that the Registrant may purchase insurance to protect any director, officer, employee or agent against any liability, whether or not the Company would have the power to indemnify such person against such liability under Delaware Law. In addition, the Registrant has entered into indemnification agreements with its directors and certain officers, pursuant to which these directors and officers are indemnified to the fullest extent permitted by the Registrant's second restated certificate of incorporation, the Registrant's amended and restated bylaws and applicable law as the same exists or may be amended.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The following exhibits are filed as part of this Registration Statement:

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 4.1                | Amended and Restated 2007 Stock Incentive Plan (incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on June 10, 2009) |

- 4.2 Form of Time-Based Restricted Stock Agreement (incorporated by reference to the Company's Registration Statement on Form S-8, Registration No. 333-143820)
- 4.3 Form of Performance-Based Restricted Stock Agreement (incorporated by reference to the Company's Registration Statement on Form S-8, Registration No. 333-143820)
- 4.4 Form of Stock Option Agreement (incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2008)
- 5.1 Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation
- 23.1 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1)
- 23.2 Consent of Independent Registered Public Accounting Firm McGladrey & Pullen, LLP
- 24.1 Power of Attorney (included in signature page to this Registration Statement)

**Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling

precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act, and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on June 26, 2009.

EPICOR SOFTWARE CORPORATION

By: /s/ Michael Pietrini  
Michael Pietrini

Chief Financial Officer, Executive Vice

President Finance and Administration

(Principal Financial Officer)

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**POWER OF ATTORNEY**

We, the undersigned officers and directors of Epicor Software Corporation, do hereby constitute and appoint L. George Klaus and Michael Pietrini, or either of them, our true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for us and in our names, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as they might or could do in person, hereby ratifying and confirming all that each of said attorney-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

| <b>Signature</b>                                 | <b>Title</b>  | <b>Date</b>   |
|--|---|---------------|
| /s/ L. George Klaus<br>L. George Klaus           | Chairman, President and Chief Executive Officer<br>(Principal Executive Officer)  | June 26, 2009 |
| /s/ Michael Pietrini<br>Michael Pietrini         | Chief Financial Officer, Executive Vice<br>President Finance and Administration (Principal<br>Financial and Accounting Officer) | June 26, 2009 |
| /s/ Michael Kelly<br>Michael Kelly               | Director  | June 26, 2009 |
| /s/ James T. Richardson<br>James T. Richardson   | Director  | June 26, 2009 |
| /s/ Robert H. Smith<br>Robert H. Smith           | Director  | June 26, 2009 |
| /s/ Michael L. Hackworth<br>Michael L. Hackworth | Director  | June 26, 2009 |
| /s/ Richard H. Pickup<br>Richard H. Pickup       | Director  | June 26, 2009 |
| /s/ John M. Dillon<br>John M. Dillon             | Director  | June 26, 2009 |

**EXHIBIT INDEX**

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