

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

CAFE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (___)

(Joint Administration Requested)

MOTION FOR ORDER AUTHORIZING THE DEBTORS TO (I) PREPARE A CONSOLIDATED LIST OF CREDITORS IN LIEU OF A MAILING MATRIX, (II) FILE A CONSOLIDATED LIST OF THE THIRTY LARGEST UNSECURED CREDITORS, (III) MAIL INITIAL NOTICES, AND (IV) SHORTEN THE MAILING LIST

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), hereby file this motion (the “**Motion**”) seeking entry of an order, in substantially the same form attached hereto as **Exhibit A**, authorizing the Debtors to (I) prepare a consolidated list of creditors in lieu of a mailing matrix, (II) file a consolidated list of the 30 largest unsecured creditors, (III) mail initial notices, and (IV) shorten the mailing list. In support of this motion, the Debtors rely on the *Declaration of Eric Easton in Support of Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”). In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Local Civil Rule 83.IX.01, D.S.C. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863). The location of the Debtors’ corporate headquarters is 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687.

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.

2. Venue of this proceeding and this Motion are proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are 11 U.S.C. §§ 105 and 521 of title 11 of the United States Code (the “**Bankruptcy Code**”)², Rules 1007 and 2002(m) of the Bankruptcy Rules and Rules 1007-1 and 2081-2(d) of the Local Rules for the United States Bankruptcy Court for the District of South Carolina (the “**Local Rules**”).

BACKGROUND

4. On the date hereof (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. Each Debtor is authorized to continue to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). As of the date hereof, no trustee, examiner, or statutory committee has been appointed in these chapter 11 cases.

5. Additional information regarding the Debtors, including their business operations, corporate and capital structure, and the events leading to the Petition Date, is more fully set forth in the First Day Declaration.²

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

RELIEF REQUESTED

6. The Debtors seek an entry of an order authorizing them to (a) prepare a consolidated list of creditors in lieu of any required mailing matrix, (b) file a consolidated list of the 30 largest unsecured creditors, (c) mail initial notices and (d) shorten the mailing list.

BASIS FOR RELIEF REQUESTED

A. Consolidated List of Creditors

7. The Debtors seek an order permitting them to maintain a consolidated list of their creditors instead of individual matrices. *See In re The Merit Group, Inc., et al.*, C/A 11-3216-hb (Bankr. D.S.C. May 24, 2011) (granting similar relief). The Debtors have over 500 creditors (excluding its current and former employees) and operate 38 locations in five states. The Debtors have approximately 1,671 employees.

8. The Debtors, in accordance with Local Rule 2081-1, have filed an application seeking the appointment of Donlin, Recano & Company, Inc. (“**Donlin**”) as claims and noticing agent in the chapter 11 cases. If such application is granted, Donlin will, among other things, (a) assist with the consolidation of the Debtors’ computer records into a creditor database and (b) complete the mailing of notices to the parties in such database. Accordingly, it is in the best interest of the Debtors’ estates to avoid the cost and risks associated with preparing and filing a separate matrix.

9. After consultation with Donlin, the Debtors believe that preparing the consolidated list in the format or formats currently maintained in the ordinary course of business will be sufficient to permit Donlin to promptly notice all applicable parties. Accordingly, it is in the best interest of the Debtors’ estates to avoid the costs and risks associated with preparing and filing separate matrices.

B. Single Consolidated List of the 30 Largest General Unsecured Creditors

10. Pursuant to Rule 1007(d), a debtor shall file “a list containing the name, address and claim of the creditors that hold the largest 20 unsecured claims, excluding insiders....” Fed. R. Bankr. P. 1007(d). However, because some creditors are shared among certain of the Debtors, and the Debtors would therefore have to expend significant resources and effort to reconcile which claims may be asserted against which Debtors, the Debtors request authority to file a single, consolidated list of their 30 largest general unsecured creditors. *See In re Merit Group, Inc., et al.*, C/A 11-3216-hb (Bankr. D.S.C. May 24, 2011) (granting similar relief).

C. Mail Initial Notices to Creditors

11. As stated above, the Debtors, by separate application, are seeking authority to retain Donlin as claims, noticing and balloting agent. The Debtors propose that Donlin will undertake all mailings directed by this Court, the U.S. Trustee or as required by the Bankruptcy Code. Additionally, Donlin will assist the Debtors in preparing creditor lists and mailing initial notices including, but not limited to, (a) a notice of filing of the chapter 11 cases; (b) a notice of a meeting of creditors under section 341 of the Bankruptcy Code; and (c) any correspondence the Debtors may wish to send to creditors and equity security holders as part of the Debtors’ communication efforts to keep their creditors and equity security holders informed with respect to the status of the chapter 11 cases. With such assistance, the Debtors will be prepared to file a computer readable consolidated list of creditors and a list of equity security holders upon request and will be capable of undertaking all necessary mailings.

12. With respect to the Debtors’ notice of filing of the chapter 11 cases, meeting of creditors, and deadlines (the “Initial Notice”), the Debtors request that Court enter case specific information (*e.g.*, each Debtor’s name, case number, tax identification number) on such Initial

Notice in each of the Debtors' cases that instructs creditors to send their proofs of claim to the following address:

If Proof of Claim or Interest is sent by mail, send to:

Donlin, Recano & Company, Inc.
Re: Cafe Holdings Corp., et al.
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219
Website: www.donlinrecano.com/cafe

If Proof of Claim or Interest is sent by Overnight Courier or Hand Delivery, send to:

Donlin, Recano & Company, Inc.
Re: Cafe Holdings Corp., et al.
6201 15th Avenue
Brooklyn, NY 11219
Website: www.donlinrecano.com/cafe

D. Shorten the Mailing List

13. Rule 2002(m) provides that “The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.” Fed. R. Bankr. P. 2002(m). Local Rule 2081-2(d) provides that “[t]he debtor may, within seven days after the filing date of the petition, file and serve on all parties in the case a motion and notice to establish a shortened mailing list that will apply to the extent permitted by Fed. R. Bank. P. 2002”. SC LBR 2081-2(d).

14. Furthermore, section 105(a) of the Bankruptcy Code also provides the Court with the power to grant the relief requested herein by the Debtors. Section 105(a) states that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code]”. *See* 11 U.S.C. § 105(a).

15. The Debtors have hundreds of potential unsecured creditors in these chapter 11 cases.

16. Rather than noticing the entire extensive mailing list on all issues, the Debtors propose to mail all notices to a shortened list in order to reduce costs and excessive, unnecessary mailings to parties not actively involved in the proceedings.

17. The Debtors believe that this Motion is appropriate and should be granted because the Debtors have more than 500 creditors and approximately 1,671 employees just prior to the Petition Date, as well as other vendors and parties-in-interest. *See In re Merit Group, Inc., et al.*, C/A 11-3216-hb (Bankr. D.S.C. May 24, 2011) (granting similar relief). The administrative cost of mailing notices to all of these creditors and parties-in-interest substantially outweighs the need for all creditors to receive notice of all matters in these cases. Moreover, creditors and parties interested in the cases may remain on the mailing matrix by simply requesting, in a notice to be filed with the Court and served on the parties on the shortened mailing matrix, that they be included on the shortened mailing matrix.

18. The Debtors propose that the following entities be included on the shortened mailing matrix without the necessity of submitting a written request (subject to their ability to request to be removed from such list at a later date): (i) the Office of the United States Trustee for the District of South Carolina; (ii) the Office of the United States Attorney General for the District of South Carolina; (iii) the Internal Revenue Service; (iv) Atalaya Administrative LLC; (v) ACM Fatz VII LLC; (vi) Midtown Madison Management LLC; (vii) Shrayne Capital, LLC; (viii) Benefit Street Partners; (ix) Milestone Partners; (x) Old Mill Stream, LLC; (xi) Triangle Mezzanine Fund LLLP; (xii) Sysco; (xiii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (xiv) all parties who, as of the filing of this motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; (xv) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; (xvi)

the Official Committee of Unsecured Creditors, if any, (xvii) counsel to the Official Committee of Unsecured Creditors, if any, and (xviii) any other parties as ordered by the Court for a particular notice or motion.

19. Notwithstanding the relief requested herein, the Debtors are not seeking relief from their obligation to give notice to all creditors and parties in interest of the section 341 meeting of creditors, the time fixed for filing proofs of claim as required by Bankruptcy Rule 2002(a), a proposed use, sale, or lease of property of the estate other than in the ordinary course of business unless the Court orders otherwise, the time fixed for filing objections to and the hearing on the Disclosure Statement and the Plan of Reorganization required by Bankruptcy Rule 2002(b), the time fixed to accept or reject a proposed modification of a plan, and the dismissal or conversion of the case to another chapter.

20. If the Court grants the relief requested, the Debtors propose to send, immediately upon its entry, the order granting this Motion to all known creditors, employees, vendors and other parties in interest listed on the full mailing matrix along with a form containing provisions that are consistent with Local Rule 2081-2(d) (a copy of which is attached to the proposed order approving the relief requested herein) to be completed and returned by interested parties in order to be listed on the shortened mailing list.

21. By and through this Motion, the Debtors specifically request that the Court waive Local Rule 2081-2(d)'s requirement that notice of the Debtors' request to establish a shortened mailing matrix be filed and served on all parties in the case. However, as set forth in the proposed order, the Debtors propose to serve a copy of any order granting the Debtors' request to establish a shortened mailing matrix on all parties in these chapter 11 cases within three (3) days of the entry of the order.

22. After entry of an order granting this Motion, the Debtors propose that service of any notices or motions shall be deemed adequate if the notice or motion in question is served (consistent with such order) upon (a) all parties set forth hereinabove as automatically listed on the shortened mailing list; (b) all parties who have filed a notice to be included on the shortened mailing list with the Court and served such notice on all parties on the shortened mailing list (to be received on or before the day prior to the actual service of the notice or motion in question); (c) all other known parties reasonably calculated to have a direct interest in the notice or motion; and (d) any other parties as ordered by the Court for the notice or motion in question.

NOTICE AND NO PRIOR RELIEF

23. Notice of this motion has been provided to the following parties: (i) the Office of the United States Trustee for the District of South Carolina; (ii) the Office of the United States Attorney General for the District of South Carolina; (iii) the Internal Revenue Service; (iv) Atalaya Administrative LLC; (v) ACM Fatz VII LLC; (vi) Midtown Madison Management LLC; (vii) Shrayne Capital, LLC; (viii) Benefit Street Partners; (ix) Milestone Partners; (x) Old Mill Stream, LLC; (xi) Triangle Mezzanine Fund LLLP; (xii) Sysco; (xiii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (xiv) all parties who, as of the filing of this motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; and (xv) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

24. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors request that the Court enter its order authorizing the Debtors to (I) prepare a consolidated list of creditors, (II) file a consolidated list of the 30 largest general unsecured creditors, (III) mail initial notices, (IV) shorten the mailing list, and (V) granting such other relief as is just and proper.

McNAIR LAW FIRM, P.A.

November 15, 2018

/s/ Michael H. Weaver
Michael H. Weaver (S.C. Dist. Ct. ID # 9847)
Robin C. Stanton (S.C. Dist. Ct. ID # 7438)
Weyman C. Carter (S.C. Dist. Ct. ID # 5218)
1221 Main Street, 18th Floor
Post Office Box 11390
Columbia, South Carolina 29211
Tel: (803) 799-9800
Fax: (803) 753-3277
mweaver@mcnair.net
rstanton@mcnair.net
wcarte@mcnair.net
*Proposed Counsel to the Debtors and
Debtors in Possession*

- AND -

HAYNES AND BOONE, LLP

/s/ Ian T. Peck
Ian T. Peck (*pro hac vice* admission pending) (TX Bar No. 24013306)
J. Frasher Murphy (*pro hac vice* admission pending) (TX Bar No. 24013214)
David L. Staab (*pro hac vice* admission pending) (TX Bar No. 24093194)
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Tel: (214) 651-5000
Fax: (214) 651-5940
Email: ian.peck@haynesboone.com
Email: frasher.murphy@haynesboone.com
Email: david.staab@haynesboone.com
*Proposed Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Order