

**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)

DEBTORS' MOTION FOR ENTRY OF ORDER (I) AUTHORIZING THE (A) CONTINUED USE OF THEIR EXISTING CASH MANAGEMENT SYSTEM AND (B) USE OF EXISTING BANK ACCOUNTS AND BUSINESS FORMS; (II) AUTHORIZING PAYMENTS OF PREPETITION COSTS AND FEES ASSOCIATED WITH CUSTOMER CREDIT AND DEBIT CARD TRANSACTIONS; (III) WAIVING THE REQUIREMENTS OF SECTION 345(B) OF THE BANKRUPTCY CODE; AND (IV) GRANTING CERTAIN RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby move this Court for entry of an order (the “**Order**”), substantially in the form attached hereto, (I) authorizing the Debtors to (A) continue to maintain their existing cash management system and (B) maintain existing bank accounts and business forms, and in connection with the foregoing, granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of South Carolina (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with the Debtors’ practices in connection with their existing cash management system or any action taken by the Debtors in accordance with the order attached hereto or any other order entered in these chapter 11 cases; (II) authorizing, but not directing, the Debtors, in their sole discretion, to pay or otherwise satisfy all prepetition costs and fees associated with customer credit and debit card transactions; (III) waiving the requirements of

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.

section 345(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) with respect to the Debtors’ deposit practices; and (IV) granting related relief. In support of this motion, the Debtors submit 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 state 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 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 is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 101(2), 105(a), 345(b), and 363(c) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) and Rule 1015(b) of the Bankruptcy 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 and manage its properties 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

RELIEF REQUESTED

6. The Debtors request entry of an order, pursuant to sections 105(a), 345(b), 363, 1107, and 1108(a) of the Bankruptcy Code, and Bankruptcy Rule 2015: (a) authorizing the Debtors to (i) continue to maintain their existing Cash Management System and (ii) maintain their existing Bank Accounts and business forms and, in connection with the foregoing, granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices in connection with their existing Cash Management System or any action taken by the Debtors in accordance with the Proposed Order or any other order entered in these chapter 11 cases; (b) authorizing, but not directing, the Debtors, in their sole discretion, to pay or otherwise satisfy all prepetition costs and fees associated with customer credit and debit card transactions and the Debtors' cash register system (the "**Credit Card Processing Fees**"); (c) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors' deposit practices; and (d) granting certain related relief.

THE DEBTORS' CASH MANAGEMENT SYSTEM

7. The Debtors maintain a centralized cash management system (the "**Cash Management System**") which they use in the ordinary course of business to collect funds

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

generated by their operations and disburse those funds to satisfy obligations required to operate their business. The Cash Management System is similar to the systems commonly employed by complex businesses comparable to that of the Debtors and comprises six main bank accounts, each used for a specific business purpose, as described in detail below.

A. The Bank Accounts

8. Prior to the Petition Date and in the ordinary course of business, the Debtors maintained approximately 22 bank accounts (collectively, the “**Bank Accounts**”) which formed the Cash Management System. A list of the Bank Accounts is attached hereto as **Exhibit A**. A schematic depicting the movement of cash through the Cash Management System is attached hereto as **Exhibit B**.

9. The Debtors maintain their primary accounts with the National Bank of South Carolina, a division of Synovus Bank (“**NBSC**”). In addition to various other accounts, the Debtors maintain their primary operating account at NBSC into which most of the Debtors’ cash is concentrated (the “**Concentration Account**”). The Debtors’ remaining bank accounts are maintained at various other banks (together with NBSC, the “**Banks**”). The majority of the remaining accounts are restaurant-specific and all funds from such accounts ultimately flow to the Concentration Account.

10. The Bank Accounts are organized as follows:

- a. The “**Concentration Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 8001). The Concentration Account is the Debtors’ primary operating account into which most of the Debtors’ cash is concentrated.
- b. The “**Restaurant Level Accounts**” are 16 accounts held at various banks. All but one of these accounts are in the name of Cafe Enterprises, Inc. A list of these accounts and the last four digits of each account number is provided in **Exhibit A**. The other account is held at Fidelity Bank and is in the name of CES Gastonia, LLC (account number ending in 5143). The Restaurant Level Accounts support the Debtors’ restaurants. All funds from

the Restaurant Level Accounts are ultimately swept into the Concentration Account.

- c. The “**Beer/Wine Zero Accounts**” are held at NBSC and are in the name of Cafe Enterprises, Inc. (account numbers ending in 2601 and 8091). The Beer/Wine Zero Accounts are zero balance accounts and are funded from the Concentration Account as electronic debits for alcoholic beverage sales are drawn against it. Each day, funds are automatically swept from the Concentration Account into the account ending in 2601 to support alcoholic beverage sales at all of the Debtors’ restaurants. Each day, funds are automatically swept from the Concentration Account into the account ending in 8091 to support alcoholic beverage sales at Tavern 24.
- d. The “**Tax Escrow Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 1001). The Tax Escrow Account is not currently in use.
- e. The “**STORE Capital Rent Payment Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 8117). The STORE Capital Rent Payment Account is used to fund rent payments on account of various restaurant lease agreements to STORE Capital. Funds are manually swept into this account from the Concentration Account to fund these rent payments.
- f. The “**Payroll Account**” is held at Meta Bank/Money Network and is in the name of Cafe Enterprises, Inc. (account number ending in 0013). The Payroll Account is a funding account and is used to make payroll disbursements.
- g. The “**Utility Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 9508). The Utility Account is not currently in use and was created for the sole purpose of holding the Debtors’ deposits for purposes of providing post-petition adequate assurance to the Debtors’ utility providers.

B. The Flow of Funds Within the Cash Management System

11. The Debtors generate revenue principally through restaurant receipts. Approximately 85% of the Debtors’ daily customer revenues is in the form of credit card transactions, and on average, the Debtors receive approximately \$200,000 in credit/debit card settlements each business banking day. The credit card payments are settled at each restaurant location seven days per week and are deposited directly into the Concentration Account each

business day, net of credit card processing fees. Credit and debit card settlements are deposited into the Concentration Account between one and three business days after they have been settled by each restaurant location. Cash receipts generated at the Debtors' restaurants are deposited approximately three times per week in the Restaurant Level Accounts. These funds are then swept three times per week from each of the Restaurant Level Accounts into the Concentration Account.

12. The average weekly sweep from the Restaurant Level Accounts into the Concentration Account was approximately \$230,000 over the last quarter.

13. Receipts transferred into the Concentration Account are used by the Debtors to satisfy their financial obligations, including payroll and benefits program payments, vendor payments, insurance premiums, rent, debt service, and taxes.

C. Inter-debtor Transactions

14. In the normal course of their businesses, the Debtors do not engage in regular inter-debtor transactions or incur substantial intercompany obligations because Cafe Enterprises, Inc. is the only entity with active business operations. When, however, as a result of the centralized Cash Management System, Cafe Enterprises, Inc. receives or disburses funds on behalf of another Debtor, it accounts for that transaction with journal entry receivables and payables, as applicable, in the Debtors' accounting records. These inter-debtor transactions are an integral and inevitable consequence of the centralized Cash Management System.

D. Check Form

15. The Debtors or their agents print nearly all of their own checks and do so on an ongoing, as-needed basis. The Debtors believe that they will be in a position to begin printing checks with the designation "Debtor in Possession" and the corresponding bankruptcy number on all such checks within fifteen (15) days of the date of the entry of the Order.

BASIS FOR RELIEF

A. The Continued Use of the Cash Management System, Including Bank Accounts, and Payment of Related Fees and Expenses is in the Best Interests of the Debtors, Their Creditors, and All Parties in Interest

16. The Debtors seek authority to continue to operate the Cash Management System, on a post-petition basis, as described herein. The Cash Management System constitutes ordinary course and essential business practices providing significant benefits to the Debtors, including, among other things, the ability to control corporate funds, ensure the maximum availability of funds and, where necessary, reduce borrowing costs and administrative expenses by facilitating the movement of funds, and the development of more timely and accurate account balance information. Disrupting their current Cash Management System would impair the Debtors' ability to optimize their business performance at this critical time as they begin the chapter 11 process. Maintenance of the existing Cash Management System will prevent undue disruption to the Debtors' business operations while protecting the Debtors' cash for the benefit of their estates. Requiring the Debtors to change their Cash Management System at this critical time would cause unnecessary disruption to the Debtors and their business affairs. Based upon the foregoing, maintenance of the existing Cash Management System is in the best interests of the Debtors and their estates.

17. Moreover, the relief sought by the Debtors herein is contemplated by the Bankruptcy Code. Section 363(c)(1) of the Bankruptcy Code authorizes debtors in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide debtors in possession with the flexibility to engage in the ordinary transactions required to operate their business without unnecessary oversight by their creditors or the court.

18. The Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). Continuing the Debtors’ Cash Management System without interruption is vital to the efficient and economic administration of these chapter 11 cases.

19. The Debtors also request that no Bank that honors a prepetition check or other item drawn on any account that is the subject of this motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored post-petition or otherwise in violation of the Proposed Order (when and if entered). The Debtors believe that such flexibility accorded to the Banks is necessary to induce the Banks to continue providing cash management services without additional credit exposure.

B. Maintenance of the Debtors’ Existing Checks and Business Forms is Warranted

20. The Debtors further request from the Court a waiver of certain bank account and related requirements (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all pre-petition bank accounts, open new accounts designated as debtor in possession accounts, and to provide new business forms and stationary) of the U.S. Trustee to the extent that such requirements are inconsistent with (i) the Debtors’ practices in connection with their Cash Management System or (ii) any action taken by the Debtors in accordance with the Proposed Order or any other order entered in these chapter 11 cases.

21. The U.S. Trustee’s “Operating Guidelines for Chapter 11 Cases” (the “**U.S. Trustee Guidelines**”) mandate, among other things, the closure of the Debtors’ prepetition bank

accounts and the opening of new accounts as a result of the filing of the Debtors' chapter 11 petitions. If the Debtors are required to comply with these requirements, their operations would be severely harmed by the disruption, confusion, delay, and cost that most certainly would result from the closure of their existing Bank Accounts.

22. The Debtors believe that the transition to chapter 11 will be more orderly, with a minimum of harm to operations, if all Bank Accounts are continued following the Petition Date with the same account numbers. By preserving business continuity and avoiding the disruption and delay to the Debtors' collection and disbursement procedures that would necessarily result from closing the Bank Accounts and opening new accounts, all parties in interest will be best served.

23. In addition to mandating the closure of the Debtors' prepetition bank accounts, the U.S. Trustee Guidelines require the immediate printing of new checks with the label "Debtors in Possession." To the extent that it is not pre-printed, the Debtors will indicate their status as debtors in possession by printing "Debtors in Possession" on any of their business forms or in wire transfer instructions.

24. In other chapter 11 cases, bankruptcy courts have recognized that strict enforcement of bank account closing requirements does not serve the rehabilitative process of chapter 11. Bankruptcy courts routinely permit debtors to continue using their existing cash management systems, generally treating requests for such relief as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see also Official Comm. of Unsecured Creditors v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1061 (3d Cir. 1993) (noting with approval the bankruptcy court's finding that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient");

Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.), 778 F.2d 167, 621 (11th Cir. 1985) (holding that the debtor’s post-petition use of their pre-petition “routine case management system” was “entirely consistent” with applicable provisions of the Bankruptcy Code).

25. Further, requests for the continued post-petition use of cash management systems in complex chapter 11 cases has been routinely granted in other bankruptcy cases. *See, e.g., In re Merit Group, Inc. et al.*, C/A 11-03216-hb (Bankr. D.S.C. May 19, 2011); *In re BI-LO, LLC*, C/A 09-2140-hb (Bankr. D.S.C. March 24, 2009); *In re Polymer Group, Inc.*, No. 02-05773-jw (Bankr. D.S.C. July 2, 2002); *In re Namco, LLC*, Case No. 13-10610 (PJW) (Bankr. D. Del. April 29, 2013) (authorizing debtors to continue using cash management system, maintain existing bank accounts, and waive deposit requirements of section 345(b) of the Bankruptcy Code).

26. Here, the Debtors’ continued use of the Cash Management System and business forms will allow the Debtors an orderly transition to post-petition operations with minimal disruption to the Debtors’ businesses.

C. The Debtors Must be Permitted to Satisfy Any Prepetition Credit Card Processing Fees

27. The Debtors, operating their businesses as debtors in possession under section 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of [their] creditors.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

28. The *CoServ* court specifically noted that pre-plan satisfaction of pre-petition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* at 498. The court provided a three-pronged

test for determining whether a pre-plan payment on account of a pre-petition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

29. As of the Petition Date, the Debtors estimate that approximately \$12,000 is owed in credit card processing fees. Satisfying the Credit Card Processing Fees, including any pre-petition obligations on account thereof, meets each element of the *CoServ* court's standard. Not surprisingly, a significant percentage of the Debtors' revenues are generated from credit and debit card sales. The Debtors therefore believe that they can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by having the authority, but not the discretion, of this Court to satisfy any outstanding pre-petition obligations on account of the Credit Card Processing Fees.

30. The Court may also authorize the payment of the Credit Card Processing Fees pursuant to section 363(b) of the Bankruptcy Code. Section 363(b) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain pre-petition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of pre-petition claims where the debtors "articulate some business justification, other than the mere appeasement of major creditors"); *see also In re James A. Phillips, Inc.*, 29 B.R. 391, 395-97 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, a

contractor to pay pre-petition claims of some suppliers who were potential lien claimants because the payments were necessary for the general contractors to release funds owed to the debtors).

31. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. Under section 105(a) of the Bankruptcy Code and the “necessity of payment” doctrine, the Court “can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating the necessity of payment doctrine “teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“to invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is ‘critical to the debtor’s reorganization’”) (citation omitted).

32. In light of the Debtors’ need to maximize value for the benefit of all creditors, the relief requested herein is proper and should be granted. Approximately 85% of the Debtors’ daily customer revenues is in the form of credit card transactions and on average, the Debtors receive approximately \$230,000 in credit and debit card settlements each business day, based on seven business days per week. The success of the Debtors’ chapter 11 efforts is dependent upon, among other things, the ability to process customer credit and debit card transactions. In the Debtors’ business judgment, the ability to pay the Credit Card Processing Fees, including any related pre-

petition amounts, is critical to the Debtors' successful prosecution of these chapter 11 cases. Any inability on the Debtors' part to continue to satisfy pre-petition obligations with respect to the Credit Card Processing Fees would threaten the Debtors' ability to continue to accept those credit cards, thereby disrupting their customers' experience and potentially depriving the Debtors of significant revenue while they try to find replacements for the processors. Finally, because the processors are responsible for remitting the actual funds from credit card transactions to the Debtors, they may assert administrative holds against funds owing to the Debtors to allow them time to adjudicate any setoff rights they have with respect to the Credit Card Processing Fees. Given the disparity in amount between the Credit Card Processing Fees and the respective amounts owed to the service providers, the Debtors would be deprived of substantial liquidity and their operations will be disrupted if they are forced to engage in such litigation. Accordingly, the Debtors believe that the relief requested herein is warranted and a sound exercise of business judgment.

33. In light of the foregoing, the Debtors submit that the relief requested herein with respect to the Credit Card Processing Fees is necessary, prudent and in the best interests of their estates and creditors and should therefore be granted.

D. Waiver of Section 345 of the Bankruptcy Code is Warranted

34. Section 345 of the Bankruptcy Code governs the Debtors' deposit and investment of cash during a chapter 11 case and authorizes deposits or investments of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires the estate to obtain from the entity with which the money is deposited or invested a bond in favor of the United

States that is secured by the undertaking of an adequate corporate surety, unless the Court for cause orders otherwise. In the alternative, the estate may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303, which provides that when a person is required by law to give a surety bond, that person, in lieu of a surety bond, may provide a governmental obligation.

35. A court may, however, relieve a debtor in possession of the restrictions imposed by section 345(b) of the Bankruptcy Code for “cause”. 11 U.S.C. § 345(b). As this motion is being filed on the first day of the Debtors’ chapter 11 cases, the Debtors request that the Court enter an order waiving the requirements of section 345(b) of the Bankruptcy Code for 60 days, without prejudice to the Debtors’ ability to seek a further waiver.

36. Given the structure and relative security of the Cash Management System, the Debtors submit that cause exists to grant a waiver of the requirements of section 345(b) of the Bankruptcy Code in the manner requested herein.

37. The relief requested herein is similar to relief granted in other chapter 11 cases in this and other districts, where courts have excused compliance with § 345 of the Bankruptcy Code altogether. For example, similar relief was granted by this Court in *In re Merit Group, Inc. et al.*, C/A 11-03216-hb (Bankr. D.S.C. May 19, 2011), *In re BI-LO, LLC*, C/A 09-2140-hb (Bankr. D.S.C. March 24, 2009) and *In re Polymer Group, Inc.*, No. 02-05773-jw (Bankr. D.S.C. July 2, 2002). *See also, e.g., In re New Century TRS Holdings, Inc.*, No. 07-10416 (Bankr. D. Del. April 3, 2007); *In re DVL Inc.*, No. 03-12656 (Bankr. D. Del. Aug. 27, 2003).

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

38. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to use property of the estate within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of

relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

39. As described above, authorizing the Debtors to maintain their Cash Management System and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical junction. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support the relief requested on the terms described herein.

WAIVER OF BANKRUPTCY RULE 6004(A)

40. To successfully implement the foregoing, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) to the extent applicable to this Motion.

RESERVATION OF RIGHTS

41. Authorization to pay any amounts under this motion shall not be deemed to constitute post-petition assumption or adoption of any contract, program, or policy pursuant to section 365 of the Bankruptcy Code. The Debtors reserve all their rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts under this motion shall not affect the Debtors' right to contest the amount or validity of any Customer Obligations.

NOTICE

42. 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

43. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court (a) enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and (b) grant such other and further relief as is just and proper.

McNAIR LAW FIRM, P.A.

November 15, 2018

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- AND -

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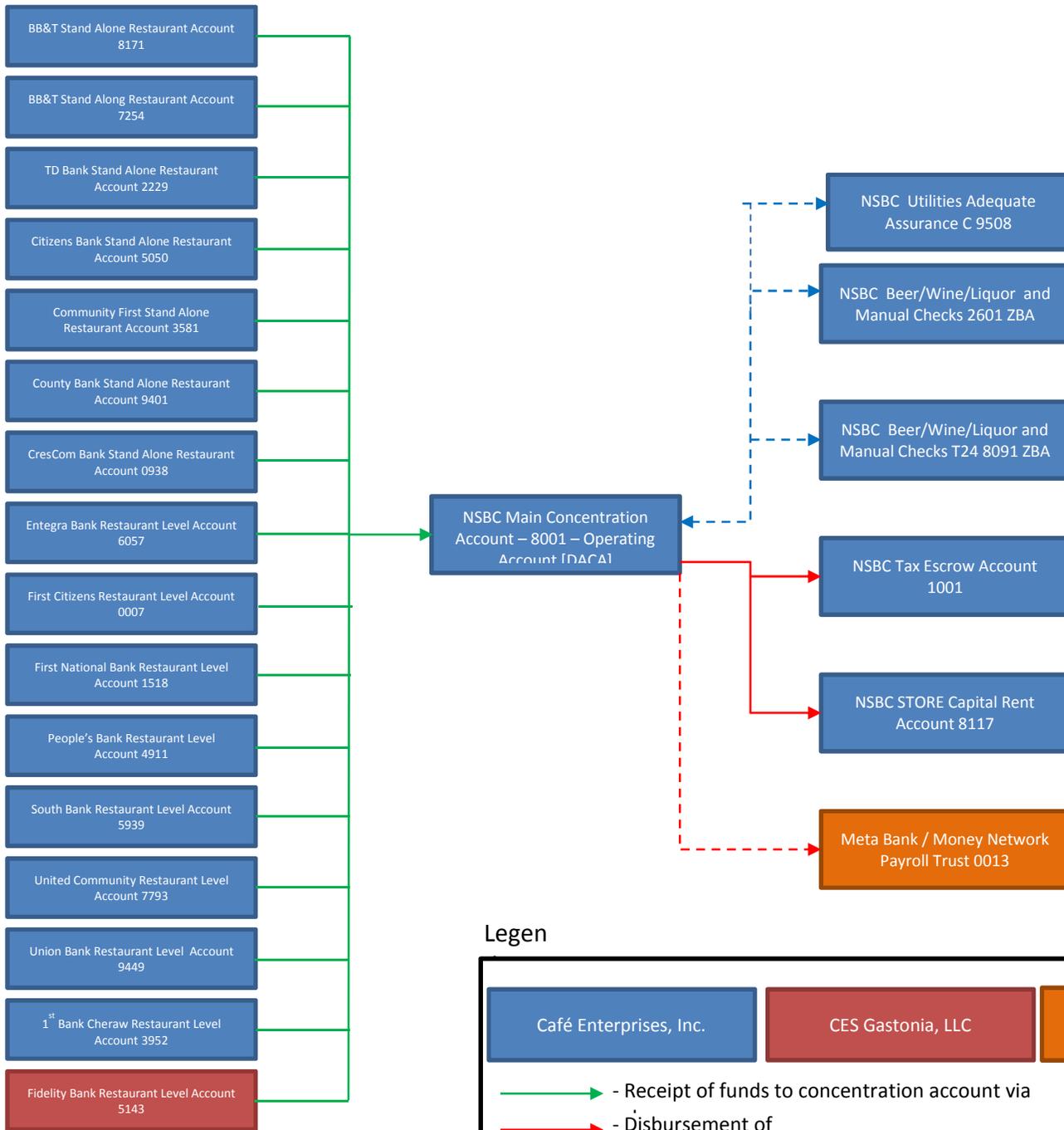
EXHIBIT A

BANK ACCOUNTS

Account Holder	Bank	Account Description	Last Four Digits of Bank Account Number
Cafe Enterprises, Inc.	BB&T	Restaurant-Level Account	8171
Cafe Enterprises, Inc.	BB&T	Restaurant-Level Account	7254
Cafe Enterprises, Inc.	TD Bank	Restaurant-Level Account	2229
Cafe Enterprises, Inc.	Citizens Bank	Restaurant-Level Account	5050
Cafe Enterprises, Inc.	Community First	Restaurant-Level Account	3581
Cafe Enterprises, Inc.	County Bank	Restaurant-Level Account	9401
Cafe Enterprises, Inc.	CresCom Bank	Restaurant-Level Account	0938
Cafe Enterprises, Inc.	Entegra Bank	Restaurant-Level Account	6057
Cafe Enterprises, Inc.	First Citizens	Restaurant-Level Account	0007
Cafe Enterprises, Inc.	First National Bank	Restaurant-Level Account	1518
Cafe Enterprises, Inc.	People's Bank	Restaurant-Level Account	4911
Cafe Enterprises, Inc.	South State Bank	Restaurant-Level Account	5939
Cafe Enterprises, Inc.	United Community	Restaurant-Level Account	7793
Cafe Enterprises, Inc.	Union Bank	Restaurant-Level Account	9449
Cafe Enterprises, Inc.	1 st Bank Cheraw	Restaurant-Level Account	3952
CES Gastonia, LLC	Fidelity Bank	Restaurant-Level Account	5143
Cafe Enterprises, Inc.	NBSC	DACA Account	8001
Cafe Enterprises, Inc.	NBSC	Beer/Wine Zero Account – Manual BWL	2601
Cafe Enterprises, Inc.	NBSC	Beer/Wine Zero Account – Tavern 24 BWL	8091
Cafe Enterprises, Inc.	NBSC	Tax Escrow Account	1001
Cafe Enterprises, Inc.	NBSC	Store Capital Rent Payment Account	8117
Cafe Enterprises, Inc.	NBSC	Utilities Adequate Assurance Account	9508
Cafe Enterprises, Inc.	Meta Bank/Money Network	Payroll Account	0013

EXHIBIT B

Schematic of Cash Management System



Legen

