

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

In re:

CAFE HOLDINGS CORP., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-\_\_\_\_ (\_\_\_\_)

(Joint Administration Requested)

**DECLARATION OF ERIC EASTON IN SUPPORT OF DEBTORS' MOTION FOR  
ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO  
PAY CERTAIN PREPETITION CLAIMS (A) ARISING UNDER THE PERISHABLE  
AGRICULTURAL COMMODITIES ACT AND SIMILAR TRUST FUND STATUTES,  
(B) OF OTHER LIEN CLAIMANTS, AND (C) OF CERTAIN CRITICAL VENDORS,  
AND (II) GRANTING CERTAIN RELATED RELIEF**

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I, Eric Easton, declare under penalty as follows:

**INTRODUCTION**

1. My background and qualifications are set forth in the First Day Declaration, and I submit this declaration (the "**Declaration**") to supplement my First Day Declaration with respect to certain relief requested by the Debtors pursuant to the Debtors' *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act and Similar Trust Fund Statutes, (B) of Other Lien Claimants, and (C) of Certain Critical Vendors, and (II) Granting Certain Related Relief* filed contemporaneously herewith (the "**Motion**").<sup>2</sup> Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge, discussions with other members

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined in this Declaration shall have the meanings set forth in the Motion.

of the Debtors' management team and the Debtors' advisors, review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, or represent my opinions and beliefs based upon my professional experience and knowledge of the Debtors and their operations. If I were called upon to testify, I could and would testify competently to the facts set forth herein on that basis. I am authorized to submit this Declaration on behalf of the Debtors.

2. Pursuant to the Motion, the Debtors seek entry of interim and final orders (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay, in the ordinary course of business as such claims come due: (i) all prepetition claims arising under the Perishable Agricultural Commodities Act of 1930 (as amended, modified, or supplemented from time to time, "**PACA**"), and any all state statutes of similar effect<sup>3</sup>, of protected vendors (collectively, the "**PACA Vendors**," whose claims shall be identified herein collectively as the "**PACA Claims**"); (ii) prepetition claims upon which a lien may arise as a result of a possessory liens (collectively the "**Lien Claims**," the holders of which shall be identified herein as the "**Lien Claimants**"); and (iii) certain prepetition claims of critical vendors (collectively, the "**Critical Vendors**," whose claims shall be identified herein as the "**Critical Vendor Claims**") that are essential to the Debtors' business operations, (b) authorizing the Debtors' banks and financial institutions (collectively, the "**Banks**") to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing, and (c) granting related relief.

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<sup>3</sup> I have been advised that some states have enacted statutes granting protection similar to that of PACA. Accordingly, the relief requested in the Motion with respect to PACA Vendors and PACA Claims is also requested with respect to the goods, claims and claimants under those state statutes having an effect and purpose similar to PACA.

**PACA CLAIMS, LIEN CLAIMS, AND CRITICAL VENDORS**

**A. PACA Claims<sup>4</sup>**

3. In the ordinary course of business, the Debtors purchase a variety of consumable goods essential for the operations of their restaurants. I have been advised that a certain portion of these goods supplied to their restaurants may qualify as “perishable agricultural commodit[ies]” under PACA. I am advised that, under PACA, PACA Vendors are the beneficiaries of a statutory trust (the “**PACA Trust**”) in all of the buyer’s perishable agricultural commodity inventory or other derivatives of perishable agricultural commodities, the products derived therefrom, and the proceeds related to any sale of the commodities or products (collectively, the “**PACA Trust Assets**”).

4. I am informed that PACA Vendors may be eligible to assert claims under the respective statutes for outstanding payments owed by the Debtors on account of applicable goods (collectively, the “**PACA Claims**”). In particular, the Debtors estimate that, as of the Petition Date, PACA Vendors hold approximately \$254,000 in unpaid PACA Claims. Because it is my understanding that the PACA Vendors may impose a PACA Trust on certain of the goods and thereby obtain priority ahead of all other secured and unsecured creditors of the Debtors’ estates, I believe that the Debtors’ payment of valid PACA Claims will not prejudice or affect the amount of recoveries available to other creditors.

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<sup>4</sup> The Debtors do not believe that their vendors have sold them “livestock,” “poultry” or any other eligible goods covered by the Packers and Stockyards Act of 1921 as amended, 7 U.S.C. § 181 et seq. (“**PASA**”), which prescribes the conditions of operations for businesses dealing in livestock. In the unlikely event, however, that any supplier claims fall under PASA, the Debtors submit that it is in the best interests of the Debtors’ estates, creditors and parties in interest to treat such claims in a manner identical to the PACA Claims.

5. I also understand that PACA Vendors may also be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code to the extent the Debtors received goods in the ordinary course of business within the twenty day period immediately prior to the Petition Date.

6. Accordingly, I believe it is in the best interest of the Debtors' estates to, in their discretion, pay or otherwise satisfy all valid PACA Claims in the ordinary course of business.

**B. Lien Claims**

7. In the ordinary course of business, the Debtors utilize certain third-party freight carriers and warehousemen to transport and/or store goods necessary for the operation of their business. As a result, at any point in time, freight carriers or warehousemen may be in possession of certain of the Debtors' goods or equipment and may have claims for transportation, storage, or services related thereto.

8. If the Debtors fail to reimburse the Lien Claimants for charges incurred in connection with the transport of goods, I understand that various state laws may permit the Lien Claimants to assert statutory liens against the goods in their possession and the subject of any delinquent charges, which would secure such charges but also potentially block the Debtors' access to the goods. Maintaining access to and preserving the value of goods is essential to the continued viability of the Debtors' operations.

9. I understand that the Lien Claimants may be entitled under applicable non-bankruptcy law to assert liens, including mechanic's liens, artisan's liens and materialman's liens against the Debtors' property (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claims. If the Debtors are unable to pay Lien Claims, I believe they risk losing access to facilities and equipment that are

critical to the continued operation of their businesses, which could immediately and irreparably harm their businesses to the detriment of all stakeholders. The Debtors estimate that the Lien Claimants may have as much as \$50,000 in Lien Claims against the Debtors as of the Petition Date.

10. Accordingly, I believe it is in the best interest of the Debtors' estates to, in their discretion, pay or otherwise satisfy all valid Lien Claims in the ordinary course of business.

**C. Critical Vendor Claims**

11. In the ordinary course of business, the Debtors rely on certain Critical Vendors for the delivery of goods and services that are critical to the continued and uninterrupted operation of the Debtors' business. The Critical Vendors are generally those parties that (i) provide maintenance services and goods, software services, and other services and materials related to the health, safety, and general upkeep of business operations or (ii) supply, either directly or as a distributor, food, alcohol, and goods related to the preparation thereof for the Debtors' restaurants.

12. To operate their restaurants, each week, the Debtors receive a variety of food and non-food items and third-party services from the Critical Vendors. If the delivery of these materials and services were stopped or delayed, the Debtors would be extremely disadvantaged in a highly competitive market segment and, more importantly, be unable to operate their restaurants.

13. To identify the Critical Vendors, the Debtors reviewed their accounts payable and prepetition vendor lists to identify only those creditors most essential to the Debtors' operations pursuant to the following criteria: (a) whether certain quality specifications or other requirements of the Debtors' customers prevent the Debtors from obtaining a vendor's products or services from alternative sources within a reasonable timeframe; (b) whether, if a vendor is not a single-source supplier, the Debtors have sufficient product in inventory to continue their operations while a

replacement vendor is put in place; and (c) whether a vendor meeting the foregoing criteria is able or likely to refuse to ship products to the Debtors postpetition if its prepetition balances are not paid.

14. The Debtors have identified approximately \$230,000 in amounts owed to Critical Vendors on account of prepetition Critical Vendor Claims, and they believe that approximately \$10,000 of these amounts relate to transactions involving the delivery of goods to the Debtors in the twenty-day period prior to the Petition Date.

15. To this end, the Debtors and their restructuring professionals, under my supervision, extensively vetted the Motion to ensure that such relief was measured to reflect only the balance absolutely necessary to prevent immediate, non-speculative, and irreparable harm to the Debtors' estates. Further, and subject to the Court's approval, any sums actually proposed to be paid pursuant to such relief will also be subject to my personal oversight as the Debtors' Chief Financial Officer to provide a further layer of supervision with respect to the implementation of that relief.

16. Without the relief granted in the Motion, the Critical Vendors may refuse to supply to the Debtors essential supplies, services, food and products. Paying the prepetition obligations owed to these vendors in the ordinary course of business will thus benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption. Additionally, the Debtors intend only to make payments to Critical Vendors where the Debtors have determined that the payment is necessary and in the best interests of the Debtors and their estates. Further, the Debtors will seek to require the Critical Vendors to enter into Vendor Agreements with the Debtors as a condition to receiving payment of their Critical Vendor Claims,

thereby ensuring that the Debtors have a committed supply of the critical goods and services provide by Critical Vendors on a go-forward basis.

17. Additionally, due to the Debtors' prepetition payment terms with the Critical Vendors, certain Critical Vendor Claims will relate to goods supplied to the Debtors within the twenty-day statutory period covered under section 503(b)(9) of the Bankruptcy Code.

18. Accordingly, I believe it is in the best interest of the Debtors' estates to, in their discretion, pay or otherwise satisfy all valid Critical Vendor Claims in the ordinary course of business.

### **CONCLUSION**

19. For the reasons set forth herein, in the Motion, and in the First Day Declaration, I believe that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will provide the Debtors' business operations a smooth transition into chapter 11.

**Declaration**

Pursuant to section 1746 of title 28 of the United States Code, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 15, 2018

Columbia, South Carolina

  
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Eric Easton  
Chief Financial Officer