

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' APPLICATION TO APPOINT AND RETAIN
DONLIN, RECANO & COMPANY, INC. AS CLAIMS AND NOTICING
AGENT TO THE DEBTORS AND DEBTORS IN POSSESSION,
EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby submit this motion for the entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the appointment and retention of Donlin, Recano & Company, Inc. (together with its affiliates and subcontractors, “**Donlin Recano**”) to serve as claims and noticing agent (the “**Application**”), effective *nunc pro tunc* to the Petition Date. In support of this application, the Debtors submit the *Declaration of Eric Easton in Support of Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”) and the *Declaration of Nellwyn Voorhies* (the “**Voorhies Declaration**”), attached hereto as **Exhibit B**. 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).

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.

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 28 U.S.C. §156(c), and sections 327(a) and 1107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 2002(f) of the Federal Rules of Bankruptcy Rules, and Rule 2081-1 of the Local Rules for the United States Bankruptcy Court for the District 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 and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. 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. By this Application, the Debtors seek the appointment of and approval to retain Donlin Recano subject to the terms of the Standard Claims Administration and Noticing Agreement, dated as of September 24, 2018 (the “**Claims and Noticing Agreement**”) by and between Donlin Recano and the Debtors (the agreement together with all amendments, modifications, renewals thereof and all documents ancillary thereto or otherwise entered into in connection therewith, are collectively referred to herein as the “**Donlin Recano Agreement**”), a copy of which is attached hereto as **Exhibit C**. Accordingly, the Debtors respectfully request the Court enter an order authorizing the appointment and retention of Donlin Recano as claims and noticing agent to perform the administrative services that will be necessary during these chapter 11 cases.

BASIS FOR RELIEF REQUESTED

7. Local Rule 2081-1 requires that unless otherwise ordered, a debtor in a case under Chapter 11 with 500 or more creditors or parties in interest must employ a claims and noticing agent in accordance with 28 U.S.C. §156(c). In addition, section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases. It states:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

8. Accordingly, section 156(c) of title 28 of the United States Code empowers the Court to utilize outside agents and facilities for notice and claims purposes, provided the Debtors' estates pay the cost of such services. Therefore, for the foregoing reasons, the Debtors believe that not only is the retention of a claims and noticing agent required but it is in the best interests of the Debtors, their estates and their creditors. Furthermore, the Debtors respectfully submit that the fees and expenses that would be incurred by Donlin Recano under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

DONLIN RECANO'S QUALIFICATIONS

9. The Debtors estimate that there are in excess of 7,000 potential creditors, in addition to approximately 1,700 current employees and an unknown number of former employees and parties in interest in these chapter 11 cases, many of which may file proofs of claim. It is expected that the noticing, as well as the receiving, docketing and maintaining of a significantly large number of proofs of claim would be unduly time-consuming and burdensome for the Clerk of Court (the "**Clerk**").

10. Although the office of the Clerk of the United States Bankruptcy Court (the "**Clerk's Office**") ordinarily would serve notices on the Debtors' creditors and other parties in interest and administer claims against the Debtors estates, the Clerk's Office may not have the resources available to deploy for such tasks, especially in light of the magnitude of the Debtors' creditor body and the tight timelines that frequently arise in chapter 11 cases.

11. Accordingly, the Debtors propose to engage Donlin Recano to act as notice and claims agent. This retention is the most effective and efficient manner of noticing the hundreds of creditors and parties in interest of the filing of the chapter 11 cases and other developments in the

chapter 11 cases. In that capacity, Donlin Recano will transmit, receive, docket and maintain proofs of claim filed in connection with the chapter 11 cases.

12. As set forth more fully in the Voorhies Declaration, Donlin Recano is a nationally-recognized administrator specializing in claims management and administration services. Donlin Recano provides comprehensive chapter 11 services, including noticing, claims processing, and other related services critical to the effective administration of chapter 11 cases.

13. Donlin Recano has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing and claims processing portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, Donlin Recano will work with the Clerk's Office to ensure that such methodology conforms with all of the Court's procedures, the Local Rules and the provisions of any orders entered by this Court. The Debtors wish to engage Donlin Recano to send out notices and to maintain claims files. The Debtors believe that such assistance will expedite service of notices, streamline the claims administration process and permit the Debtors to focus on their reorganization efforts.

14. The Debtors believe that Donlin Recano is well qualified to provide such administrative services, expertise, consultation and assistance. As set forth in the Voorhies Declaration, Donlin Recano has substantial experience in matters of this size and complexity and has acted as the official notice and claims agent in many large bankruptcy cases in this District and other districts nationwide, including among others: *Georgetown Steel Company, LLC*, Case No. 03-13156 (Bankr. D.S.C. 2003); *In re Bestwall LLC*, Case No.17-31795 (Bankr. W.D.N.C. 2017), *In re Gump's Holdings LLC*, Case No. BK-S-14684 (Bankr. D. Nev 2018), *In re EBH Topco, LLC*, Case No. 18-11212 (BLS) (Bankr. D. Del. 2018); *In re PZ Wind Down, Inc.*, Case No. 17-12890

(CSS) (Bankr. D. Del. 2017); *In re Velocity Holding Company, Inc.*, Case No. 17-12442 (KJC) (Bankr. D. Del. 2017); *In re Mac Holding LLC*, Case No. 17-12226 (MFW) (Bankr. D. Del. 2017).³

SERVICES TO BE PROVIDED

15. The terms of the Donlin Recano Agreement shall govern the Debtors' retention of Donlin Recano except as explicitly set forth herein or in any order granting this Application.

16. Subject to the Court's approval, Donlin Recano has agreed to provide, at the Debtors' request, the following services in these chapter 11 cases in accordance with the Donlin Recano Agreement:

a. Prepare and serve required notices and documents in the cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court including: (i) notice of the commencement of the cases and the initial meeting of creditors under Bankruptcy Code § 341(a); (ii) notice of any claims bar date; (iii) notices of transfers of claims; (iv) notices of objections to claims and objections to transfers of claims; (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' chapter 11 plan, including under Bankruptcy Rule 3017(d); (vi) notice of the effective date of any chapter 11 plan; and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the cases, including notices or orders under Local Rule 2081-2

b. Maintain copies of all proofs of claim filed in the cases.

c. Maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, "Schedules"), listing the Debtors' known creditors and the amounts owed thereto and to the extent necessary assist in gathering data in conjunction with the preparation of the Debtors' Schedules;

d. Maintain (i) a list of all potential creditors, equity holders, and other parties-in-interest and (ii) a "core" mailing list consisting of all parties described in sections 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;

e. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are

³ Because of the voluminous nature of the orders cited herein, they are not attached to the Application. Copies of these orders, however, are available on request of the Debtors' proposed counsel.

approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;

f. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;

g. For *all* notices, motions, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes: (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served; (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses; (iii) the manner of service; and (iv) the date served;

h. Process all proofs of claim received, including those received by the Clerk, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;

i. Maintain the official claims register for each Debtor (the “**Claims Registers**”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned; (ii) the date received; (iii) the name and address of the claimant and agent, if applicable, who filed the claim; (iv) the amount asserted; (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*); (vi) the applicable Debtor; and (vii) any disposition of the claim;

j. Filing a monthly updated claims register with the court in alphabetical and numerical order for the first six full months following the Petition Date; thereafter, a quarterly updated claims register with the Court in alphabetical and numerical order. If there was no claims activity, a certification of no claim activity may be filed;

k. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;

l. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);

m. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Donlin Recano, not less than weekly;

n. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk’s review (upon the Clerk’s request);

o. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;

p. Assist in the dissemination of information to the public at no cost to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center;

q. Providing such other claims processing, noticing and administrative services as the Debtors may require;

r. Complying with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;

s. If the cases are converted to chapter 7, contact the Clerk within three (3) days of the notice to Donlin Recano of entry of the order converting the case;

t. Thirty (30) days prior to the close of the cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing Donlin Recano and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of the cases;

u. Within seven (7) days of notice to Donlin Recano of entry of an order closing the cases, provide to the Court the final version of the Claims Register as of the date immediately before the close of the cases; and

v. At the close of the cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's Office, to the location requested by the Clerk, and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

w. Promptly complying with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe.

17. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by Donlin Recano.

18. Donlin Recano shall not employ any past or present employee of the Debtors for work that involves the Debtors' cases.

COMPENSATION

19. The Debtors request authority to compensate and reimburse Donlin Recano in accordance with the payment terms of the Donlin Recano Agreement for all services rendered and

expenses incurred in connection with these chapter 11 cases. The Debtors believe that such compensation rates are reasonable and appropriate for services of this nature and are comparable to those charged by other providers of similar services.

20. Furthermore, the Debtors respectfully submit that the fees and expenses of Donlin Recano incurred in the performance of the above services be treated as an administrative expense of the Chapter 11 estates and be paid by the Debtors in the ordinary course of business.

21. The Debtors propose that the cost of Donlin Recano's services be paid from the Debtors' estates as provided by 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code. The Debtors seek authorization to pay Donlin Recano's fees and expenses in accordance with the provisions of any order approving this Application, without the necessity of filing formal fee applications.

22. Prior to the Petition Date, the Debtors paid Donlin Recano a retainer in the amount of \$30,000 plus \$10,000.00 in prepetition payments, of which \$25,124.36 was applied to prepetition services. Donlin Recano seeks to first apply the retainer to all prepetition invoices, thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Donlin Recano Agreement during the pendency of the cases as security for the payment of fees and expenses under the Donlin Recano Agreement. Following the termination of the Donlin Recano Agreement, Donlin Recano will return to the Debtors any amount of the retainer that remains.

23. Donlin Recano agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, counsel for the first lien holder secured party, and any

party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Donlin Recano Agreement or invoices, the parties shall meet and confer in an attempt to resolve the dispute between Donlin Recano and the Debtors with respect to fees and expenses, such dispute shall be presented to the Court for resolution.

24. Donlin Recano will comply with any order entered approving this Application and all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

INDEMNIFICATION

25. As part of the overall compensation payable to Donlin Recano under the terms of the Donlin Recano Agreement, the Debtors have agreed to certain limitations of liability and indemnification obligations as described in Section 11 of the Claims and Noticing Agreement. The Donlin Recano Agreement provides that the Debtors will indemnify and hold harmless Donlin Recano, its affiliates, members, directors, consultants, subcontractors and agents under certain circumstances specified in the Donlin Recano Agreement, except in circumstances of gross negligence, bad faith, fraud, or willful misconduct. Both the Debtors and Donlin Recano believe that such provisions are customary and reasonable for notice and claims agents in chapter 11 cases.

DISINTERESTEDNESS OF DONLIN RECANO

26. Although the Debtors do not propose to retain Donlin Recano under section 327 of the Bankruptcy Code, to the best of the Debtors' knowledge, and as disclosed in the Voorhies Declaration, Donlin Recano neither holds nor represents an interest materially adverse to the Debtors' estates nor has a connection to the Debtors, their creditors or their related parties with respect to any matter for which Donlin Recano will be employed. Donlin Recano may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which

Donlin Recano serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor.

27. To the best of the Debtors' knowledge and except as disclosed in the Voorhies Declaration, Donlin Recano neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed and that it is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code.

28. In connection with its retention as claims and noticing agent, Donlin Recano represents, among other things, that:

- a. Donlin Recano will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the notice and claims agent in these chapter 11 cases;
- b. By accepting employment in these chapter 11 cases, Donlin Recano waives any rights to receive compensation from the United States government;
- c. In its capacity as the claims and noticing agent in these chapter 11 cases, Donlin Recano will not be an agent of the United States and will not act on behalf of the United States; and
- d. Donlin Recano will not employ any past or present employees of the Debtors in connection with its work as the notice and claims agent in these chapter 11 cases.

29. Should Donlin Recano discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Donlin Recano will use reasonable efforts to file promptly a supplemental affidavit.

30. For the reasons set forth herein, the Debtors respectfully submit that the appointment and retention of Donlin Recano pursuant to the terms of any order approving this Application and the Donlin Recano Agreement will inure to the benefit of their estates and all parties in interest by expediting the case noticing as well as the claims docketing and enabling

these bankruptcy cases to be conducted in a cost-effective and efficient manner by a firm with proven abilities in performing such services.

31. At the request of the Debtors' Donlin Recano has served in the capacity of claims and noticing agent since the Petition Date, on the basis that the Debtors would seek approval of its appointment and retention, effective *nunc pro tunc* to the Petition Date, so that Donlin Recano may be compensated for its services prior to the entry of any order approving this Application. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* appointment and retention because Donlin Recano has provided and continues to provide valuable services to the Debtors' estates in the interim period.

32. Therefore, the Debtors' respectfully request that any order approving the Application authorizing the appointment and retention of Donlin Recano as claims and noticing agent be effective *nunc pro tunc* to the Petition Date.

NOTICE

33. 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.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached hereto as **Exhibit A**, 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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