

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

Café Holdings Corp., *et al.*

Debtors.

Case No. 18-05837-hb

Case No. 18-05838-hb

Case No. 18-05839-hb

Case No. 18-05840-hb

Chapter 11

(Joint Administration Requested)

**OBJECTION OF UNITED STATES TRUSTEE TO DEBTORS'
FIRST DAY MOTIONS**

The United States Trustee (the UST) objects and responds¹ to the Debtor's first day motions. The first day motions that are to be heard on November 19, 2018, are set forth in the Order Granting Debtors' Motion for Emergency Hearing on Selected First Day Motions entered on November 15, 2018 (Doc. No. 20). To date, no schedules have been filed, and the Debtors have requested an extension to file same. The UST is in the process of soliciting interest for the formation of a committee of unsecured creditors and has requested that responses be submitted by November 27, 2018. A meeting of creditors pursuant to 11 U.S.C. § 341 is presently scheduled for December 14, 2018. The UST files this objection pursuant to the authority granted to him by 28 U.S.C. § 586 and 11 U.S.C. § 307.²

The grounds for this objection are:

DIP MOTION

- The UST has some serious concerns regarding the overreaching language in the proposed DIP Order. To summarize, the road that the Debtors and the DIP Lenders are paving toward a liquidating plan, the Debtors' first lien lender, Madison Capital Funding LLC, sold its debt position to Shrayne Capital, LLC on September 14, 2018, which in turn sold

¹ The UST has been in discussions with the Debtors' counsel who has been very cooperative. The UST believes that at least some of the issues raised in this objection may be resolved prior to the first-day hearings on November 19, 2018.

² Further reference to Title 11 U.S.C. § 101, *et. seq.* will be by section number only.

the debt to Atalaya Capital Management, LP on November 13, 2018 – two days before the cases filed bankruptcy. The DIP Motion proposes Atalaya Administrative, LLC to act as DIP Agent and ACM Fatz VII LLC to act as DIP Lender. It is the UST's understanding that the DIP Lenders are affiliated with Atalaya Capital Management, LP – which bought the first lien debt. Against that backdrop, the Debtors are now seeking approval of a \$3.2 million DIP Facility – with a \$1.0 million borrowing cap during the interim period. The proposed order is wrought with many overreaching provisions that, pursuant to SC LBR 4001-4(b), are usually not approved. Accordingly, the UST requests that the relief sought in the DIP Motion be denied in its current form.

CRITICAL VENDOR

- The UST has requested from the Debtors but not received a specific list of critical vendors that the Debtors propose to pay. The list should identify the creditor and the amount owing for prepetition goods and services. The UST needs this to assist him in forming an unsecured creditors committee. To date, the Debtors also have not provided sufficient information to justify payments to critical vendors. The doctrine of necessity should be narrowly construed, and the Debtors carry the burden to prove that there is no alternative available to the Debtors. The information in the declaration of Eric Easton does not justify such payments.

GENERAL ISSUES

- The UST requests that the wage motion, tax motion, insurance motion, customer motion, critical vendor motion, cash management motion, DIP motion, and utilities motion, to the extent approved, be approved on an interim basis. The UST respectfully requests that the language setting the date and time of the hearing and the objection deadline for each motion be included in the orders granting interim relief. Because it appears that a final hearing on these motions may be set for December 5, 2018, less than 30 days from the date of the interim hearing on the motions, the UST requests revisions to the language present in certain of the proposed orders which provides that “the interim relief granted herein shall be deemed final in 30 days without further action or order, unless a party in interest files an objection to the relief granted herein within 30 days from the entry of this Order.”
- The UST requests that in the wage motion, tax motion, insurance motion, and customer motion, language be added that clarifies that during the interim period and prior to the final hearing, only payments that are owing and due within the interim period be paid – *e.g.* debt payments accrued pre-petition but not payable under after the final hearing should not be paid as part of the interim budget.

The UST asks the Court to consider his objections and to deny the relief requested by the Debtors, unless the Debtors can cure or resolve the above-stated objections. The UST reserves all rights he may have to object to the emergency relief requested in the first day motions filed by

the Debtors as further explanations, interpretations, amended documents, or representations by the Debtors bring to light problems and issues not discernable at the time of the filing of this objection.

JOHN P. FITZGERALD, III
ACTING UNITED STATES TRUSTEE
REGION FOUR

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Date: 11-19-18

CERTIFICATE OF SERVICE

I, Elisabetta G. Gasparini, do hereby certify that on November 19, 2018, I served the below-named documents upon the parties listed below by electronic mail.

OBJECTION OF UNITED STATES TRUSTEE TO DEBTORS' FIRST DAY MOTIONS

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by electronic transmission through the Court's Electronic Case Filing system to the participants in this case, including the following participants:

Michael H. Weaver, Esquire

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