

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

In re:

CAFÉ HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-08837(hb)

Jointly Administered

**DECLARATION OF KIM TREAT IN SUPPORT OF
OMNIBUS OBJECTION OF FRESHPOINT NORTH CAROLINA, INC. TO DEBTORS'
MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE
DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING
ADEQUATE PROTECTION TO THE PREPETITION LENDERS, (V) MODIFYING THE
AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING
RELATED RELIEF, AND DEBTORS' MOTION FOR ENTRY OF AN ORDER (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**

Kim Treat, being duly sworn, deposes and says:

1. I am the Credit Manager for the Charlotte branch office of FreshPoint North Carolina, Inc. ("FreshPoint"), as well as FreshPoint Atlanta, Inc., and make this Declaration in support of FreshPoint's Omnibus Objection to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors To Obtain Post-Petition Financing, (II) Authorizing the Debts to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expenses Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "DIP-Cash Collateral Motion"),

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

and Debtors' Motion for Entry of an Order (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 (III) Granting Certain Related Relief (the "PACA Motion"). I understand that Café Holdings Corp., Café Enterprises, Inc., CE Sportz LC, and CES Gastonia LLC (the "Debtors") filed for bankruptcy protection.

2. I am personally familiar with all matters which are the subject of this proceeding and the facts set forth in this declaration are within my personal knowledge. If called upon as a witness, I would and could competently testify to all facts stated in this declaration.

3. FreshPoint is a Tennessee corporation with offices located in Nashville, Tennessee, Charlotte, North Carolina, and Raleigh, North Carolina, that sells wholesale quantities of perishable agricultural commodities (hereafter "produce"). FreshPoint is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §499a *et. seq.* (hereafter "PACA"). A copy of the PACA license information for FreshPoint is attached hereto as **Exhibit "1."**²

4. The sales and accounts receivable records of the Charlotte branch office of FreshPoint, including invoices and aging reports, are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are a record. These business records are made by me or under my direction and supervision by employees whose duty it is to prepare such documents.

5. My responsibilities include monitoring the sale of produce, including those sales that are the subject of this dispute. My responsibilities also include supervising collection of the accounts receivable for such sales, including Debtors' accounts which are the subject of the present

² PACA license information is published by the USDA's Agricultural Marketing Service at <http://apps.ams.usda.gov/pacasearch/default.aspx>.

Objection. I have custody and control of the sales and accounts receivable records of the Charlotte branch office of FreshPoint as they relate to Debtors and I am thoroughly familiar with the manner in which those records are compiled.

6. I can attest that FreshPoint sold and delivered over 2,000 pounds of produce in a single day to Debtors. Verifying the weight of produce is necessary to ensure that the trucks delivering the produce are loaded properly and do not exceed their maximum cargo tolerances.

7. I reviewed Debtors' accounts and found that Debtors received over one ton produce from FreshPoint on 9/04/18, invoice nos. 9569249, 9569190, 9569388, and 9569381, copies of which are attached as part of Exhibits 15, 17, 18, and 14 hereto.

8. In addition, Debtors purchased over \$230,000 worth of produce from FreshPoint in calendar year 2018.

9. Between May 12, 2018, and November 14, 2018, FreshPoint sold to Debtors and delivered to Debtors' restaurant locations in Camden, South Carolina; Clinton, South Carolina; Lenoir, North Carolina; Orangeburg, South Carolina; Gastonia, North Carolina; Greer, South Carolina; Spartanburg (Pottery Road), South Carolina; Spartanburg (Boiling Springs Road), South Carolina; Easley, South Carolina; Greenwood, South Carolina; Seneca, South Carolina; Hendersonville, North Carolina; N. Charleston, South Carolina; Shelby, North Carolina; Gaffney, South Carolina; Asheville, North Carolina; Forest City, North Carolina; Morgantown, North Carolina; Lexington, South Carolina; Lincolnton, North Carolina; Irmo, South Carolina; Columbia, South Carolina; Rock Hill, South Carolina; Florence, South Carolina; Marion, North Carolina; and Anderson, South Carolina, in interstate commerce or in contemplation of interstate commerce, various wholesale lots of produce worth the principal amount of \$223,840.01, all of which remains unpaid. FreshPoint also sold dairy and juice items to Debtors totaling \$9,593.29 for which

PACA trust protection is not sought; however, some of the unpaid non-produce items were sold within twenty (20) days of Debtors' filing for bankruptcy. A true and correct Aged Receivables Report for the produce and non-produce items sold to Debtors by the Charlotte branch of FreshPoint is attached hereto as **Exhibit "2."**

10. Debtors accepted the produce received from FreshPoint.

11. FreshPoint preserved its interest in the PACA trust in the unpaid principal amount of \$223,840.01 by timely delivering invoices to Debtors which contained the language required under Section 5(c)(4) of the PACA, 7 U.S.C. §499e(c)(4). True and correct copies of the unpaid invoices are attached hereto as **Exhibits "3" through "28."**

12. Debtors are obligated to hold in trust all produce-related assets received from the sale of produce in order to pay the principal prepetition produce debt of \$223,840.01 to FreshPoint.

13. Each of the invoices sent by the Charlotte branch office of FreshPoint to Debtors contained the contractual terms that Debtors are required to pay interest on all outstanding invoices at 18% per year, and all collection costs, including reasonable attorneys' fees incurred by FreshPoint in collecting the debt owed to it by Debtors.

14. Debtors have failed to pay to FreshPoint the pre-petition principal amount of \$223,840.01 owed for produce sold by the Charlotte branch office of FreshPoint under the trust provisions of PACA.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 3, 2018.

FRESHPOINT NORTH CAROLINA, INC.



Kim Treat, Credit Manager
FreshPoint Charlotte Branch Office