

EXHIBIT A TO MOTION

Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

CAFE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-05837 (hb)

(Jointly Administered)

**ORDER AUTHORIZING DEBTORS' RETENTION AND
COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED
IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the "**Motion**")² of the above captioned debtors and debtors in possession (collectively, the "**Debtors**"), for entry of an order authorizing the Debtors' retention and compensation of certain professionals utilized in the ordinary course of business (the "**Order**"); it appearing that the relief requested herein is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2); and it appearing that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion and opportunity for a hearing on the Motion was appropriate under the circumstances and that no other or further notice with respect to the Motion need be given; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED:

1. The Motion is granted as set forth herein.

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.

2. The Debtors are authorized, but not directed, to continue to retain and pay the reasonable fees and expenses of the ordinary course professionals (“OCPs”) listed on Exhibit 1 attached hereto.

3. Subject to the limitations set forth below, the Debtors may pay, without formal application to this Court by an OCP or by the Debtors, one hundred percent (100%) of the post-petition interim fees and disbursements to each of the OCPs upon the submission to the Notice Parties (as defined herein) of an appropriate invoice setting forth in reasonable detail the nature of the services rendered.

4. The following terms and procedures will govern the retention and compensation of the OCPs (the “**OCP Compensation Procedures**”):

- a. The Debtors may, in the reasonable and ordinary conduct of their businesses, employ OCPs for the performance of tasks related to the Debtors’ ordinary course of business. Professionals utilized by the Debtors to handle matters in connection with these chapter 11 cases, or related litigation, other than ordinary course or ministerial matters, will be retained by the Debtors pursuant to individual retention applications, as allowed by this Court.
- b. Each OCP shall, prior to being entitled to receive compensation pursuant to the terms of this Order, complete and file a Declaration of Disinterestedness in substantially the form attached hereto as Exhibit 2. Furthermore, the acceptance of employment by OCPs shall constitute a representation by the Debtors and the involved professionals that:
 - i. To the best of the Debtors’ knowledge, after reasonable inquiry, such OCPs do not represent or hold any interest adverse to either the Debtors or their estates with respect to the matters upon which such OCP is to be employed;
 - ii. The arrangement for post-petition compensation reached between the Debtors and such OCPs is reasonable based upon the nature, extent, and value of such services, the time spent on such services and the cost of comparable services other than in a case under the Bankruptcy Code, reimbursement of disbursements will only be for actual and necessary expenses not exceeding the value of such expenses; and
 - iii. All transactions between the Debtors and such professionals shall be

subject to section 329 of the Bankruptcy Code as well as to all other provisions of the Bankruptcy Code regulating the fairness and reasonable worth of services rendered by professionals seeking and receiving compensation.

- c. OCPs employed pursuant to the terms of the Order shall be authorized to draw down any retainers in payment of such post-petition fees and expenses approved by the Debtors without further order of this Court.
- d. Each OCP must submit a copy of each invoice to (i) the Debtors, 4324 Wade Hampton Blvd., Suite B, Taylors, SC 29687, Attn: Eric Easton; (ii) counsel for the Debtors: (a) Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian T. Peck; and (b) McNair Law Firm, P.A., P.O. Box 11390, Columbia, South Carolina 29211, Attn: Michael Weaver; (iii) counsel to the Committee: Pachulski Stang Ziel & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Bradford J. Sandler; (iv) Counsel to Atalaya Administrative LLC: (a) Holland & Knight, LLP, Attn: Brent McIlwain, 200 Crescent Court, Suite 1600, Dallas, TX 75201; (b) Fox Rothschild, Attn: M. Kevin McCarrell, 2 W. Washington Street, Suite 1100, Greenville, South Carolina 29601-2784; and (v) to the Office of the United States Trustee for the District of South Carolina, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201, Attn: Elisabetta G. Gasparini (“**Notice Parties**”).
- e. The Notice Parties shall have fourteen (14) days from receipt of the invoice (the “**Objection Period**”) to object to the invoice. Objections, if any, must be served upon (i) the OCP, and (ii) each of the Notice Parties listed above.
- f. If any objection cannot be resolved within fourteen (14) days of its receipt, the matter shall be scheduled for hearing before the Court. If no objection to an invoice is received from any of the Notice Parties by the expiration of the Objection Period, the Debtors shall be authorized to pay such OCPs on account of such post-petition invoice.
- g. The Debtors reserve the right to modify the list of OCPs as necessary, from time to time, in their sole discretion. If the Debtors propose to modify the list of OCPs, the Debtors will file a notice with the Court listing the additional OCPs that the Debtors intend to employ and serve notice thereof on the Notice Parties. If the Notice Parties do not object to any proposed modification to the list of OCPs within fourteen (14) days of service of the notice regarding the proposed modifications, then retention of the OCPs shall be deemed approved by the Court without a hearing or further order.
- h. Each of the Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100% of the OCPs post-petition fees and expenses after compliance with the procedures set forth above.

- i. No OCP shall be entitled to payments of more than \$10,000 for any one month, and the OCPs, in the aggregate, shall not be entitled to payment of more than \$50,000 for services provided in any month, without further Order of this Court. Any requested payments beyond this amount, shall be subject to prior approval of the Court in accordance with sections 330 and 331 of the Bankruptcy Code.

5. The Debtors shall have the right to supplement the list of OCPs as necessary to add or remove OCPs, from time to time in their sole discretion, without the need for any further hearing and without the need to file individual retention applications for newly added OCPs. In such event, the Debtors shall file the OCP Notice and serve such notice on the Notice Parties.

6. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorized hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor in possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral.

7. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

9. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

AND IT IS SO ORDERED.

EXHIBIT 1 TO ORDER

Ordinary Course Professionals

1. Keating Marshall PLLC
101 E. Park Blvd., Ste. 879
Plano, TX 75075
Corporate General Counsel

2. Turner Padgett, Graham & Laney, P.A.
PO Box 1473
Columbia, SC 29202
Litigation and Employment Counsel

3. BDO USA LLP
PO Box 642743
Pittsburgh, PA 15264-2743
Tax and Audit Services

4. Gasthalter & Co. LP
733 Third Avenue, 16th Floor
New York, NY 10017
Public Relations

5. Socius 1, LLC
5747 Perimeter Drive, Ste. 200
Dublin, OH 43017
Accounting Systems

6. Lockton Companies, LLC
c/o Bank of America
PO Box 741732
Atlanta, GA 30374-1732
Insurance Brokerage Firm

EXHIBIT 2 TO ORDER

Declaration of Disinterestedness

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

CAFE HOLDINGS CORP., *et al.*,¹
Debtors.

Chapter 11

Case No. 18-05837(hb)

(Jointly Administered)

DECLARATION OF DISINTERESTEDNESS

I, _____, declare under penalty of perjury:

1. I am a [position] of [Company], located at [Street, City, State, Zip Code] (the “**Company**”).

2. On November 15, 2018 (the “**Petition Date**”), the above referenced debtors and debtors in possession (“**Debtors**”) each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), thereby commencing the above-captioned chapter 11 bankruptcy cases.

3. The Debtors have requested that the Company provide [insert specific description] services to the Debtors, and the Company has agreed to provide such services.

4. The Company may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to the Debtors’ chapter 11 cases, for persons that are parties-in-interest in the Debtors’ chapter 11 cases. However, the Company does not perform services for any such person in connection with the Debtors’ chapter 11 cases, or have any relationship with any such person, their attorneys or accountants that would be adverse to the Debtors or their estates.

5. As part of its customary practice, the Company is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants and parties-in-interest in the chapter 11 cases.

6. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Company has agreed to share or will share any portion of the compensation to be received from any of the Debtors with any other person other than the principal and regular employees of the Company.

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7. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Company, insofar as I have been able to ascertain, holds, or represents any interest adverse to any of the Debtors or their estates with respect to the matter(s) upon which this Company is to be employed.

8. The Debtors owe the Company \$ [] on account of unpaid pre-petition services, the payment of which is subject to limitations contained in the Bankruptcy Code.

9. As of the Petition Date, the Company [was/was not] party to an agreement for indemnification with certain of the Debtors. [A copy of the such agreement, if any, is attached as **Exhibit X** to this Declaration].

10. The Company is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

11. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: _____, 2018.

[DECLARANT]