

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)

**FINAL 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, (II) GRANTING
CERTAIN RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for the entry of an order (this “**Final Order**”), (i) authorizing, but not directing, the Debtors, in their sole discretion, to pay certain (a) PACA Claims, (b) Lien Claims, and (c) Critical Vendor Claims in the ordinary course of business as such claims come due, and (ii) authorizing the Banks, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay all checks and electronic payment requests related to the Claims, all as set forth more fully in the Motion; and upon consideration of the Motion and all pleadings related thereto; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy valid PACA Claims, as determined by the Debtors in their sole discretion, in the ordinary course of business.
3. Any PACA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA Claim will be deemed to have waived any and all claims of whatever type, kind, or priority against the Debtors, their property, their estates, and any PACA Trust Assets, but only to the extent of the payment received by such PACA Vendor on account of its PACA Claim.
4. The Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy in the ordinary course of business all valid Lien Claims.
5. The Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy all valid Critical Vendor Claims, in the ordinary course of business in an aggregate amount not to exceed \$230,000, absent further authorization from this Court. With respect to Critical Vendors that were not included on the list of Critical Vendors that the Debtors provided to the U.S. Trustee, payment of such Critical Vendors' claims is permitted only after five days' notice to the U.S. Trustee and the Official Committee of General Unsecured Creditors (the "**Committee**").
6. The Debtors shall provide the Office of the United States Trustee and the Committee with a weekly report containing a list of payments made in the prior week pursuant to

this Final Order, including the date the payment was made, the amount of the payment, and the identity of the recipient.

7. Prior to making a payment of a Critical Vendor Claim to a Vendor that was not on the list of Critical Vendors that the Debtors provided to the U.S. Trustee and the Committee, the Debtors shall provide five (5) business days' advance notice in writing, which may be by electronic mail (a "**Notice**"), to the U.S. Trustee and the Committee of the Debtors' intent to pay such Claims. The Committee and the U.S. Trustee shall have through 5:00 p.m. prevailing Eastern Time on the third business day after receipt of a Notice (the "**Review Period**") to notify the Debtors in writing, which may be by electronic mail, of any issues (the "**Issues**") with respect to the payment of any claimant. If the Committee and the U.S. Trustee do not notify the Debtors of any Issues by the expiration of the Review Period, or if the Committee and the U.S. Trustee consent to the proposed payments before the expiration of the Review Period, the Debtors shall be permitted to pay the respective claimants, subject to the terms of this Order. If the Committee or U.S. Trustee timely notifies the Debtors of any Issue with respect to any payment (a "**Questioned Payment**") prior to the expiration of the Review Period, then the Debtors shall not pay such Questioned Payment without further order of this Court or consent of the Committee and U.S. Trustee; provided, however, that the Debtors may, subject to the terms of this Order, pay any other claim on the Notice other than any Questioned Payment.

8. The Debtors shall use their commercially reasonable efforts to cause Critical Vendors to enter into a Vendor Agreement with the Debtors substantially similar to that attached as Exhibit D to the Motion as a condition of payment of their Critical Vendor Claims; *provided, however*, that the Debtors, after consulting with the Committee, may modify any of the terms of the Vendor Agreement set forth in Exhibit D to the Motion (with such modified terms becoming

part of the Vendor Agreement), including the Customary Trade Terms, if the Debtors determine, in the exercise of their business judgment, that such modifications are necessary to avoid irreparable harm to the Debtors and their estates and are otherwise in the best interest of the Debtors and their estates.

9. Subject to the cap set forth in paragraph 5 of this Final Order, notwithstanding the absence of a Vendor Agreement with a Critical Vendor, the Debtors are authorized to make payments on the prepetition claim of any Critical Vendor if, after the Debtors have undertaken diligent efforts to enter into a Vendor Agreement with such Critical Vendor, the Debtors determine that such payment is necessary to avoid irreparable harm to the Debtors and their estates and is otherwise in the best interest of the Debtors and their estates

10. The Debtors may also condition the payment of any Lien Claim on the Vendor entering into a Vendor Agreement substantially similar to that attached as Exhibit D along with any modified terms the Debtors believe are necessary, reasonable, appropriate and in the best interest of their estates (with such modified terms becoming part of the Vendor Agreement).

11. In the event that any Vendor that has entered into a Vendor Agreement and refuses to continue to provide goods and services, as applicable, on an uninterrupted basis, to the Debtors in accordance with the terms of the applicable Vendor Agreement, without further order of this Court and in their sole discretion, the Debtors shall be authorized to deem the payments made to any such Vendor to have been in payment of any then-outstanding post-petition claims of such Vendor and deem any applicable Vendor Agreement to be terminated. If this situation arises, the previously paid Claims of the Vendor shall be reinstated as Claims in the amount deemed by the Debtors to have been in payment of any then-outstanding post-petition claims of such Vendor. To the extent that the payments made to the Vendor on account of the previously paid Claims exceed

the post-petition amounts then owed to such Vendor, all rights of the Debtors and their estates to recover such payments shall be reserved.

12. The Debtors' Banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all Claims, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

13. The Debtors' Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

14. Nothing in the Motion or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as (a) an admission as to the validity, priority or amount of any claim or lien against the Debtors or their estates or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (b) a waiver of the rights of the Debtors and their estates, or shall impair the ability of the Debtors and their estates, to contest the validity, priority, and amount of any claims or any payment made pursuant to this Final Order.

15. The terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

17. Notwithstanding anything to the contrary herein, this Order shall not be construed to prejudice, diminish or waive the trust rights of PACA Vendors, including the right to seek relief from the Court to compel payment of asserted PACA Claims in the event there is a dispute as to the validity, amount, and/or payment of PACA Claims.

18. Notwithstanding anything to the contrary herein, any payments authorized to be made pursuant to this Final Order shall be made only to the extent authorized under the cash collateral and debtor-in-possession financing budget approved by the Court in effect as of the time such payment is to be made.

19. Notice of the Motion satisfied the requirements set forth in Bankruptcy Rule 6004(a).

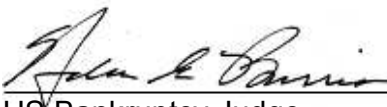
20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

AND IT IS SO ORDERED.

**FILED BY THE COURT
12/06/2018**



Entered: 12/06/2018


US Bankruptcy Judge
District of South Carolina

Certificate of Notice Page 7 of 8
United States Bankruptcy Court
District of South Carolina

In re:
Cafe Holdings Corp.
Debtor

Case No. 18-05837-hb
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0420-7 User: richardso Page 1 of 2 Date Rcvd: Dec 06, 2018
Form ID: pdf01 Total Noticed: 1

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 08, 2018.

aty +Ian T. Peck, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, TX 75219-7673

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center. NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 08, 2018

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 6, 2018 at the address(es) listed below:

- Brandon K. Poston on behalf of Creditor Committee Official Committee of Unsecured Creditors
keith.poston@nelsonmullins.com,
Stephanie.arnold@nelsonmullins.com;linnea.hann@nelsonmullins.com;stephanie.arnold@nelsonmullins.com;joan.kishline@nelsonmullins.com
Craig Solomon Ganz on behalf of Creditor Store Master Funding I, LLC ganzc@ballardspahr.com, phxdocketingbkr@ballardspahr.com,hartt@ballardspahr.com
Craig Solomon Ganz on behalf of Creditor STORE Master Funding V, LLC ganzc@ballardspahr.com, phxdocketingbkr@ballardspahr.com,hartt@ballardspahr.com
Daniel K Felker on behalf of Creditor Bruce Dressler dan@huckandfelker.com, brandy@hucksandfelker.com
David Brian Wheeler on behalf of Creditor Old Mill Stream, LLC davidwheeler@mvalaw.com
Elisabetta G. Gasparini on behalf of U.S. Trustee US Trustee's Office elisabetta.g.gasparini@usdoj.gov
Francesca Macchiaverna on behalf of Creditor Geoffrey S. Stutchman and Leehouang T. Stutchman as Trustees for the Stutchman Family Trust, successors-in-interest to Store Capital Acquisitions, LLC fmacchiaverna@huntermaclean.com, btees@huntermaclean.com
John Timothy Stack on behalf of U.S. Trustee US Trustee's Office John.T.Stack@usdoj.gov
Mary M. Caskey on behalf of Attorney Michael DiGiacomo mcaskey@hsblawfirm.com, awilloughby@hsblawfirm.com;uveguilla@hsblawfirm.com;cwilliamson@hsblawfirm.com
Mary M. Caskey on behalf of Creditor STORE Master Funding V, LLC mcaskey@hsblawfirm.com, awilloughby@hsblawfirm.com;uveguilla@hsblawfirm.com;cwilliamson@hsblawfirm.com
Mary M. Caskey on behalf of Attorney Craig S. Ganz mcaskey@hsblawfirm.com, awilloughby@hsblawfirm.com;uveguilla@hsblawfirm.com;cwilliamson@hsblawfirm.com
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Michael H. Weaver on behalf of Debtor Cafe Holdings Corp. mweaver@mcnair.net, khandrock@mcnair.net
Michael Kevin McCarrell on behalf of Creditor ACM Fatz VII LLC kmccarrell@foxrothschild.com, eaccetta@foxrothschild.com
Randy A. Skinner on behalf of Creditor Freshpoint North Carolina, Inc. janice@skinnerlawfirm.com;candicem@skinnerlawfirm.com
Robin C. Stanton on behalf of Debtor Cafe Holdings Corp. rstanton@mcnair.net, abennett@mcnair.net
Stanley H. McGuffin on behalf of Creditor STORE Master Funding V, LLC smcguffin@hsblawfirm.com, cwilliamson@hsblawfirm.com;mcaskey@hsblawfirm.com;uveguilla@hsblawfirm.com
Stanley H. McGuffin on behalf of Creditor Store Master Funding I, LLC smcguffin@hsblawfirm.com, cwilliamson@hsblawfirm.com;mcaskey@hsblawfirm.com;uveguilla@hsblawfirm.com

District/off: 0420-7

User: richardso
Form ID: pdf01

Page 2 of 2
Total Noticed: 1

Date Rcvd: Dec 06, 2018

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

US Trustee's Office USTPRegion04.CO.ECF@usdoj.gov
Weyman C. Carter on behalf of Debtor Cafe Holdings Corp. wcarte@mcnair.net,
dhayes@mcnair.net

TOTAL: 21