

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re

CAFE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-05837(hb)

~~(Joint Administration Requested)~~ [Jointly Administered](#)

INTERIM~~FINAL~~ ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING ~~ON AN INTERIM BASIS~~, GRANTING SENIOR POSTPETITION SECURITY INTERESTS AND ACCORDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO SECTIONS 364(c) AND 364(d) OF THE BANKRUPTCY CODE, (2) AUTHORIZING THE USE OF CASH COLLATERAL, (3) GRANTING ADEQUATE PROTECTION, (4) MODIFYING THE AUTOMATIC STAY, AND (5) GRANTING RELATED RELIEF

Upon the motion (the “Motion”) of the above-captioned debtors (each a “Debtor” and collectively, the “Debtors”) seeking, among other things:

(1) authority pursuant to sections 363 and 364(c) and (d) to obtain debtor-in-possession secured financing (the “DIP Facility”) pursuant to the following terms and agreements (collectively, the “DIP Financing Documents”): (a) ~~this~~an interim order (the “Interim Order”), and ~~any~~this final order entered by the Court with respect to the Motion (the “Final Order”), and (b) the *Cafe Enterprises, Inc., et al. Terms and Conditions of Proposed Senior Secured, Super-Priority Debtor-in-Possession Credit Facility*, attached hereto as Exhibit 1, as amended, modified, and/or supplemented (the “DIP Term Sheet”),² by and among the Debtors, as borrowers and debtors-in-possession, Atalaya Administrative LLC, as agent (the “DIP Agent”) for the lenders and other financial institutions party to the DIP Term Sheet or which extend credit thereunder (the “DIP Lenders,” and collectively with the DIP Agent, the “DIP Secured Parties”);

(2) the grant to the DIP Agent, for the benefit of itself and the other DIP Lenders, of superpriority administrative claim status pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code in accordance with the terms of this ~~Interim~~Final Order;

(3) authorization for the Debtors’ use of cash collateral whenever or wherever acquired, and the proceeds of all collateral pledged to the Pre-Petition ACM Secured Parties (defined

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 not otherwise defined herein shall have the meanings ascribed to them in the DIP Term Sheet.

below), as contemplated by section 363 of the Bankruptcy Code in accordance with the terms set forth herein;

(4) a grant of adequate protection to the Pre-Petition ACM Secured Parties (as defined below) under and in connection with the Pre-Petition Loan Documents (as defined below) in accordance with the terms set forth herein; and

(5) modification of the automatic stay to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) and 6004(h); ~~and (6) a final hearing setting for the Motion for entry of an order authorizing the DIP Facility and use of cash collateral on a final basis.~~

Notice of the Motion, the relief requested therein, and the ~~Interim~~Final Hearing (as defined below) (the “Notice”) having been served by the Debtors on the following parties in accordance with Rule 4001(c) ~~and the Order Authorizing the Debtors to (I) Prepare a Consolidated List of Creditors in Lieu of a Mailing Matrix, (II) File a Consolidated List of the Thirty Largest Unsecured Creditors, (III) Mail Initial Notice, and (IV) Shorten the Mailing List [Dkt. 57]:~~

- (i) the DIP Agent ~~and~~, the DIP Lenders, and the Pre-Petition ACM Secured Parties;
- (ii) Benefit Street Partners, L.L.P.;
- (iii) Old Mill Stream, LLC;
- (iv) the Office of the United States Trustee for the District of South Carolina (the “U.S. Trustee”);
- ~~(iii)~~ (v) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis;
- ~~(iv)~~ (vi) all parties known to the Debtors who hold any liens or security interest in the Debtors’ assets who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors’ knowledge, have asserted any liens on any of the Debtors’ assets; ~~(v)~~
- (vii) the Internal Revenue Service and all taxing authorities of states in which the Debtors conduct business; ~~(vi)~~
- (viii) the U.S. Attorneys’ Office for states in which the Debtors conduct business;
- (ix) all parties who are counterparties to the Debtors’ unexpired leases of non-residential real property;
- (x) all parties with an open Accounts Payable balance with the Debtors as of the Petition Date;
- (xi) the Debtors’ utility providers;
- (xii) the Debtors’ insurance providers;
- (xiii) all parties who are counterparties to any litigation proceedings commenced against the Debtors as of the Petition Date; and
- (ix) all parties who have requested notice in these Chapter 11 cases pursuant to Bankruptcy Rules 2002, 9007, and 9010, as well as certain other parties identified in the certificates of service filed with the Court.

The Court held an interim hearing with respect to the Motion on November 19-20, 2018 (the “Interim Hearing”). A final hearing on the Motion was held on December 18, 2018 (the “Final Hearing”).

After the Motion ~~and~~, the proceedings before the Court at the Interim Hearing, the Court having entered the Interim Order, and after the proceedings before the Court at the ~~Interim~~Final Hearing; and all objections, if any, to the ~~interim~~ relief requested in the Motion having been withdrawn, resolved or overruled by the Court as reflected on the record established by the Debtors at the Interim Hearing and the Final Hearing;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. On November 15, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”);⁴

B. The Debtors have continued in the management and operation of their business pursuant to sections 1107 and 1108, and no trustee or examiner has been appointed;

C. The Debtors served notice of the Motion and the Final Hearing as required under the Federal Rules of Bankruptcy Procedure and local rules of this Court as set forth in the Affidavits of Service filed on the docket at Docket Nos. ~~27~~27, 28, and ~~28~~105;

D. The Court has core jurisdiction over the Debtors’ bankruptcy cases, the Motion, and the parties and property affected by this ~~Interim~~Final Order pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409;

³ To the extent, any findings of fact constitute conclusions of law, they are adopted as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

⁴ Unless otherwise noted, all statutory references are to the Bankruptcy Code.

E. ~~As of the date hereof, the United States Trustee has not yet appointed an official committee of unsecured creditors in this case pursuant to section 1102 (a “Statutory Committee”);~~
On November 28, 2018, an Official Committee of Unsecured Creditors (the “Committee”) was appointed in these cases;

Stipulations

F. The Debtors have entered into the following stipulations (collectively, the “Stipulations”) with the Pre-Petition ACM Secured Parties and the DIP Secured Parties (each as defined hereafter). The following stipulations are not binding on third parties until the Challenge Period expires as set forth in paragraph 27 of this ~~Interim~~Final Order.

(1) as of the Petition Date, the Debtors were party to each of:

(x) a Credit Agreement dated as of March 21, 2014 (such agreement, as amended and existing immediately prior to the Petition Date, the “Pre-Petition Credit Agreement”) with Atalaya Administrative LLC as agent (as successor in interest to Madison Capital Funding LLC) and the other lenders party thereto; and

(y) all other documents, instruments, and agreements executed in connection with the Pre-Petition Credit Agreement (such agreements, collectively with the Pre-Petition Credit Agreement, the “Pre-Petition Loan Documents”);⁵

(2) Atalaya Administrative LLC serves as agent (in such capacity, the “Pre-Petition Agent”) under each of the Pre-Petition Loan Documents. The other lenders party to each of the Pre-Petition Loan Documents shall be referred to in this ~~Interim~~Final

⁵ Any party wanting a copy of the Pre-Petition Loan Documents may contact proposed counsel for the Debtors: Haynes and Boone, LLP attn: David Staab (david.staab@haynesboone.com).

Order as the “Pre-Petition Lenders”, and the Pre-Petition Lenders and Pre-Petition Agent shall be collectively ~~be~~ referred to herein as the “Pre-Petition ACM Secured Parties”;

(3) As of the Petition Date, the Debtors were indebted to the Pre-Petition ACM Secured Parties, without defense, counterclaim, recoupment or offset of any kind, in the approximate non-contingent liquidated amount of no less than \$10,521,000.00 as of November 14, 2018, plus all other amounts arising in respect of the Pre-Petition Loan Document obligations existing immediately prior to the Petition Date (such obligations, the “Pre-Petition ACM Obligations”);

(4) The Pre-Petition ACM Obligations were secured by valid, enforceable, properly perfected, first priority and unavoidable liens on and security interests (the “Pre-Petition ACM Liens”) encumbering all assets of the Debtors existing immediately prior to the commencement of the Debtors’ bankruptcy proceeding (the “Pre-Petition Collateral”);

(5) the DIP Secured Parties are willing to provide postpetition financing to the ~~Debtor~~Debtors through the DIP Facility and the DIP Financing Documents;

(6) the Pre-Petition ACM Secured Parties consent to the Debtors’ use of the Pre-Petition Collateral and cash collateral (as such term is defined in Bankruptcy Code section 363(a)) only upon the conditions contained in this ~~Interim~~Final Order and the DIP Financing Documents;

(7) the Debtors possess no claims, offsets, or other rights or causes of action against the Pre-Petition ACM Secured Parties that would in any manner impair, reduce or otherwise modify the Pre-Petition ACM Obligations or the validly perfected Pre-Petition ACM Liens upon the Pre-Petition Collateral;

(8) the Pre-Petition ACM Obligations constitute valid, binding obligations of the Debtors, enforceable in accordance with their terms, and the Debtors and any of their guarantors will not assert any claims, counterclaims, setoffs, or defenses of any kind or nature, which in any way would affect the validity and enforceability of any of the Pre-Petition ACM Obligations and/or the security interests or liens of the Pre-Petition ACM Secured Parties upon the Pre-Petition Collateral, or which would in any way reduce the obligation of the Debtors to pay in full all of the Pre-Petition ACM Obligations;

(9) the Debtors reasonably and in good faith believe that the use of Cash Collateral and the loans, advances, and other financial accommodations to be obtained pursuant to the DIP Facility are sufficient to fund all projected legitimate and allowable expenses of their Chapter 11 cases from the Petition Date during the period to which the Budget (as approved by the DIP Agent) pertains; and

(10) each of the Debtors is a duly organized, validly existing legal entity and has the requisite power and authority to own, lease, and operate its property, including, without limitation, the DIP Collateral. Each of the Debtors has the requisite power and authority to enter into, execute, deliver, and perform its obligations under the DIP Financing Documents and this ~~Interim~~Final Order and to incur the obligations provided for thereon. Except as may be explicitly required in the DIP Financing Documents, no consent or waiver of, filing with, authorization, approval or other action by any shareholder, any federal, state, or other governmental authority or regulatory body or any other Person (other than the DIP Secured Parties), which has not already been obtained or done, is required in connection with the execution, delivery and performance by the Debtors of any

of the documents required as a condition to the validity or enforceability of the DIP Financing Documents, other than entry by this Court of this ~~Interim~~Final Order;

Debtors' Need for Use of Cash Collateral and DIP Financing

G. The Debtors are unable to obtain sufficient levels of unsecured credit allowable under section 503(b)(1) as an administrative expense necessary to maintain and conduct their business;

H. The Debtors are unable to obtain secured credit except under the terms and conditions provided in this ~~Interim~~Final Order;

I. All cash of the Debtors, wherever located on the Petition Date, represents (i) proceeds of loans or other financial accommodations provided to the Debtors by the Pre-Petition ACM Secured Parties under Pre-Petition Loan Documents; or (ii) proceeds of Pre-Petition Collateral. Such funds (the "Cash Collateral") constitute cash collateral within the meaning of section 363 of the Bankruptcy Code;

J. It is in the best interest of the Debtors' estates that the Debtors be allowed to enter into the DIP Facility in order to obtain postpetition secured financing from the DIP Secured Parties ~~in up to~~ the ~~interim~~ amount of \$~~1,000,000~~3,200,000, and use the Pre-Petition Collateral and Cash Collateral subject to and in accordance with the terms of this ~~Interim~~Final Order and the DIP Financing Documents, and to grant adequate protection to the Pre-Petition ACM Secured Parties on account of the Debtors' Pre-Petition ACM Obligations, on ~~an interim~~a final basis under the terms and conditions set forth herein and in the DIP Financing Documents, as such is ~~necessary to avoid immediate and irreparable harm to~~in the best interests of the Debtors' estates ~~pending the Final Hearing~~and consistent with the Debtors' exercise of their fiduciary duties;

K. The Debtors believe that the ~~interim~~ extension of credit and ~~interim~~ financial accommodations under the Interim Order, this Final Order, the DIP Facility and DIP Financing Documents are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration and the DIP Secured Parties are entitled to the protections of section 364(e) of the Bankruptcy Code;

L. The Debtors require access to the ~~interim~~ funding available under the DIP Facility and the DIP Financing Documents in order to satisfy administrative expenses associated with the operation of their business as a going concern and other costs relating to the administration of this chapter 11 cases, and ~~in order to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing~~ entering into this Final Order, the DIP Facility and the DIP Financing Documents is consistent with the Debtors' exercise of their prudent business judgment and fiduciary duties;

M. The Pre-Petition ACM Secured Parties are unwilling to consent to use of the Pre-Petition Collateral by the Debtors, except under the terms of the DIP Financing Documents and this ~~Interim~~Final Order assuring that the liens and the various claims, superpriority claims, and other protections granted in this ~~Interim~~Final Order will not be affected by any subsequent reversal or modification of this ~~Interim~~Final Order or any other order, as provided in section 364(e), which is applicable to the postpetition financing arrangement contemplated in the DIP Financing Documents and the use of Cash Collateral contemplated this ~~Interim~~Final Order; and

N. Good and sufficient cause exists for the ~~issuance~~entry of this ~~Interim Order, to prevent immediate and irreparable harm to the Debtors' estates.~~Final Order. The Debtors have a need to obtain up to \$3,200,000 under the DIP Facility and to access the Cash Collateral to satisfy

their liquidity requirements to preserve and operate their business and maintain business relationships with their vendors, suppliers, landlords, customers, and other parties-in-interest.

Based upon the foregoing, and after due consideration and good cause appearing therefor;
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

Interim DIP Facility Borrowings

1. The Motion is granted as set forth herein on ~~an interim~~ final basis. The Debtors are authorized, pursuant to sections 363 and 364, to enter into the DIP Facility and DIP Financing Documents, to execute such other and additional documents necessary or desired to implement the DIP Facility or DIP Financing Documents, to obtain postpetition secured financing from the DIP Secured Parties, and to use the Pre-Petition Collateral, Cash Collateral, and the proceeds and products thereof, pursuant to the terms and conditions of the DIP Financing Documents and this ~~Interim Order to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing~~ Final Order. The Debtors shall use the ~~interim~~ advances obtained under the DIP Facility and the DIP Collateral (including Cash Collateral) only for the purposes and in the amounts not to exceed \$~~1,000,000~~ 3,200,000 on ~~an interim~~ final basis set forth in the DIP Term Sheet attached hereto as Exhibit 1 and Budget attached hereto as Exhibit 2, subject to the terms and conditions set forth in the DIP Financing Documents.

Budget and Permitted Variances

2. With respect to the Budget:

(a) the Debtors' actual Budget line items for (a) total cash receipts from operations, (b) food vendors, (c) payroll expenses, (d) operating expenses, and (e) marketing expenses (each of the foregoing line items a "Tested Operating Line Item" and collectively, the "Tested Operating Line Items"), shall each be adhered to, by line item, on a weekly basis and a cumulative basis for the Budget (as defined below) period then ending, subject to the Budget Variances described

below, provided, however, that amounts not disbursed in a line item shall be deemed to roll over to subsequent weeks;

(b) actual amounts for each Tested Operating Line Item may not vary from the applicable Budget (including any amounts deemed to roll over from a previous week due to not being spent) by (i) for the first four (4) weeks of the Budget period, more than twelve and a half percent (12.5%) per Tested Operating Line Item on a weekly basis or more than ten percent (10.0%) per Tested Operating Line Item on a cumulative basis for that portion of the Budget Period then ending; or (ii) from and after the fifth (5th) week of the Budget, more than ten percent (10.0%) per Tested Operating Line Item on a weekly basis or more than seven and a half percent (7.5%) per Tested Operating Line Item on a cumulative basis for that portion of the Budget period then ending; (collectively, the “Budget Variances”);

(c) for all Professional Fees within the Budget attributable to professionals of the Debtors or ~~Statutory~~the Committee, the Debtors shall not: (i) allow actual disbursements for each such Professional Fee line item (and for the avoidance of doubt, each professional receiving Professional Fees shall be reflected on its own line item)⁶ to be more than the budgeted disbursements for such Professional Fee line item during the cumulative period from the Petition Date to the end of the applicable current weekly Budget period; and (ii) pay any Professional Fees unless authorized by further order of the Court. Any fees payable to professionals retained by the DIP Secured Parties set forth in the Budget shall not be limited by the amounts set forth in the Budget, subject to the rights of parties pursuant to paragraph 5.

(d) Any expenditures made by the Debtors on account of the Budget line item titled “Other Food Vendors Cure (PACA)” shall be subject to the terms of ~~any interim or final order of~~

⁶ Provided, however, that the Professional Fees of Haynes and Boone, LLP and McNair Law Firm, P.A. shall be reflected under a single line item titled “Debtors’ Bankruptcy Counsel²².”

~~the Court granting the Debtors' Motion for Entry of an~~ the 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) or Other Lien Claimants, and (C) of Certain Critical Vendors and (II) Granting Certain Related Relief [Dkt. No. 170].

Restrictions on Use of DIP Proceeds

3. ~~During the pendency of this Interim Order, no~~ No proceeds of the DIP Facility or Cash Collateral shall be used to (a) permit the Debtors or any other party-in-interest to challenge, contest, or institute any proceeding to determine (i) the validity, perfection, or priority of any security interests in favor of the Pre-Petition ACM Secured Parties or the DIP Secured Parties or (ii) the enforceability of the Debtors' obligations or the obligations of any guarantor under the Pre-Petition Loan Documents or DIP Financing Documents; (b) investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim, motion, proceeding or cause of action against the Pre-Petition ACM Secured Parties or the DIP Secured Parties or any of their agents, attorneys, advisors or representatives, including, without limitation, claims or causes of action relating to lender liability or subordination claims; (c) investigate, commence, prosecute, or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim or proceeding or cause of action to disallow or challenge the obligations of the Debtors or any guarantor under the Pre-Petition Loan Documents or the DIP Financing Documents, or (d) fund any acquisitions, capital expenditures, capital leases, or similar expenditures other than those specifically set forth in the Budget; provided, however, that ~~a Statutory~~ the Committee ~~(if any)~~ and its professionals shall be allowed to use proceeds of the DIP Facility or Cash Collateral, in an

amount not to exceed fifteen thousand dollars (\$15,000), to investigate the validity of the Pre-Petition ACM Liens (the “Committee Budget”).

DIP Superpriority Claim

4. Pursuant to sections 363 and 364(c) and (d), the DIP Facility funds advanced pursuant to the terms of ~~this~~the Interim Order or this Final Order (collectively, the “~~Interim-DIP Advances~~”) shall be allowed administrative expenses of the Debtors’ estates, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors and over all administrative expenses or charges against property arising in the Debtors’ Chapter 11 cases and any superseding Chapter 7 case including, without limitation, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (~~subject to the~~upon entry of ~~the~~this Final Order), 507(a), 507(b), 726, 1113 or 1114, subject and junior only to the Carve-Out (as hereinafter defined) (such claim, the “DIP Superpriority Claim”).

5. Interest on the Pre-Petition ACM Obligations shall, to the extent permitted under the Bankruptcy Code, accrue from and after the Petition Date at the rate set forth in the Pre-Petition Credit Agreement and be payable along with interest accruing on the ~~Interim~~ DIP Advances, as set forth in the Budget and DIP Term Sheet. The reasonable fees and expenses of the DIP Secured Parties, regardless of whether such amounts were incurred prior to or after the Petition Date, shall be payable (without further notice, motion, or application to, order of, or hearing before, the Court) within sixteen (16) days after delivery to the Debtors, U.S. Trustee, and counsel for ~~any~~ Statutorythe Committee of a summary statement of professional fees and expenses subject to reimbursement by the Debtors; provided, however, that the Debtors, the U.S. Trustee and counsel for ~~any~~ Statutorythe Committee shall have fourteen (14) days following the receipt of such professional fee statement to object to the reasonableness of the fees and expenses included

therein. If any objection is asserted, the parties may request that the Court decide the issue, and the Debtors shall not be required to pay any disputed portion of such fees or expenses until the matter is resolved. For the avoidance of doubt, failure to pay such disputed fees or expenses while the Court resolves such dispute will not be an Event of Default, even if it is determined by the Court that such payment should have been made.

DIP Lien

6. Pursuant to sections 363, 364(c), and 364(d), as security for the ~~Interim~~ DIP Advances and other postpetition costs payable under the DIP Financing Documents, the Debtors are hereby authorized to and are hereby deemed to grant to the DIP Agent a valid, binding and enforceable lien, mortgage and/or security interest (a "Lien", and as so granted to the DIP Agent, the "DIP Lien") in all of the Debtors' presently owned or hereafter acquired property and assets, whether such property and assets were acquired before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and the proceeds and products thereof (collectively, the "DIP Collateral"), excluding (i) any causes of action that could be brought pursuant to sections 544, 545, 547, 548 of the Bankruptcy Code, or any applicable state fraudulent transfer statutes (the "Avoidance Actions"); and (ii) any lease agreements between any of the Debtors and STORE Master Funding V, LLC or STORE Master Funding I, LLC (any such lease, a "STORE Lease"). ~~Subject to~~ Upon entry of ~~the~~ this Final Order, the DIP Collateral shall include proceeds of (and property received in respect of) Avoidance Actions ("Avoidance Proceeds").

7. Pursuant to sections 364(c) and (d), the DIP Lien shall be a first priority senior and priming lien on the DIP Collateral, subject and junior only to (a) the Carve-Out and (b) valid, enforceable, properly perfected, and unavoidable prepetition Liens (including any Liens that are perfected after the Petition Date that are afforded priority due to the express relation back of the

perfection of such lien to a date prior to the Petition Date as permitted by Bankruptcy Code section 546(b)) that are senior to the Pre-Petition ACM Liens (“Senior Third Party Liens”). The DIP Lien shall not be subject or subordinate to any Lien which is avoided and which would otherwise be preserved for the benefit of the Debtors’ estates under section 551, and in no event shall any person or entity who pays (or causes to be paid) any of the obligations under the Pre-Petition Loan Documents or DIP Financing Documents be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred upon, the DIP Secured Parties by the terms of the DIP Financing Documents until such time as the obligations under the DIP Financing Documents and this InterimFinal Order are indefeasibly paid in full, in cash. The DIP Lien shall not be subject or subordinate to Liens arising after the Petition Date, other than Liens granted pursuant to this InterimFinal Order to the extent set forth in this InterimFinal Order.

Cash Collateral

8. All rents, income, profits, cash in accounts and deposits derived from the Pre-Petition Collateral constitute Cash Collateral. Provided that each of the conditions set forth in this Paragraph are satisfied, the Debtors shall be authorized to use the Cash Collateral only in accordance with the terms of the Budget, this InterimFinal Order, and the other DIP Financing Documents. The satisfaction of each of the following conditions shall constitute a condition to the Debtors’ authorization to use any Cash Collateral: (i) no Event of Default (as defined in the DIP Term Sheet) shall exist or be continuing; and (ii) the Termination Date (as defined in the DIP Term Sheet) shall not have occurred. If, on any date, any of such conditions is not satisfied, then the Debtors shall not be authorized to use any Cash Collateral unless and until: (i) such use is consented to by DIP Agent in its sole and absolute discretion; or (ii) such use of Cash Collateral is

authorized by the Court. At the November 19, 2018 hearing on the Motion, the Court orally granted the Debtors authority to use Cash Collateral in an amount not to exceed \$200,000, to which the DIP Secured Parties consented. The Debtors' usage of any such Cash Collateral on November 19, 2018 shall be subject to the terms of this ~~Interim~~Final Order.

Adequate Protection

9. Until the indefeasible payment in full of the Pre-Petition ACM Obligations, the Pre-Petition ACM Secured Parties are entitled to adequate protection of their interests in the Pre-Petition Collateral (including Cash Collateral) solely to the extent of the diminution in value of the Pre-Petition Collateral as a result of (a) the provisions of the Interim Order or this ~~Interim~~Final Order granting first priority and/or priming liens on such Pre-Petition Collateral to the DIP Agent for the benefit of the DIP Secured Parties, (b) the Debtors' use of the Pre-Petition Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Pre-Petition Agent, on behalf of and for the benefit of the Pre-Petition ACM Secured Parties, is hereby granted, solely to the extent of diminution in value of the Pre-Petition ACM Liens in the Pre-Petition Collateral from and after the Petition Date the following:

- A. a Lien in all DIP Collateral (the "Pre-Petition ACM Adequate Protection Lien") junior only to (i) the Carve-Out and (ii) the DIP Lien; and
- B. a postpetition superpriority administrative expense claim (the "Pre-Petition ACM Adequate Protection Claim") against each of the Debtors with recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof under sections 503 and 507 of the Bankruptcy Code against the Debtors' estates to the extent the

Pre-Petition ACM Adequate Protection Lien does not adequately protect against the diminution in value of the Pre-Petition ACM Liens, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors or their estates and over all other administrative expenses of any kind, including, without limitation, those specified in sections 105, 326, 328, 330, 331, 503(b), 506(c) (~~subject to upon~~ entry of ~~the~~this Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code, or otherwise and including those resulting from the conversion of the chapter 11 case pursuant to section 1112 of the Bankruptcy Code; subject and junior only to the Carve-Out and the ~~Interim~~ DIP Advances.

10. Until the indefeasible payment in full of the obligations owed to the Second Lien Agent and Second Lien Lenders under the Second Lien Loan Documents (as each such term is defined in the DIP Term Sheet), the Second Lien Agent and Second Lien Lenders are entitled to adequate protection of their interests in the Pre-Petition Collateral (including Cash Collateral), if any, solely to the extent of the diminution in value of the Pre-Petition Collateral, if any, as a result of (a) the provisions of this ~~Interim~~Final Order granting first priority and/or priming liens on such Pre-Petition Collateral to the DIP Agent for the benefit of the DIP Secured Parties, (b) the Debtors' use of the Pre-Petition Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Second Lien Agent, on behalf of and for the benefit of the Second Lien Lenders, is hereby granted, solely to the extent of diminution in value of their interests in the Pre-Petition Collateral from and after the Petition Date the following:

A. a Lien in all DIP Collateral (the “Second Lien Adequate Protection Lien”) junior only to (i) the Carve-Out, (ii) the DIP Lien, (iii) the Pre-Petition ACM Liens, and (iv) the Pre-Petition ACM Adequate Protection Liens.

11. Nothing herein shall be deemed to be a waiver by any Pre-Petition ACM Secured Party of its right to request additional or further protection of its interests in any property of the Debtors, to move for relief from the automatic stay (if such relief is required), to seek the appointment of a trustee or examiner or the dismissal of any of the Debtors’ bankruptcy cases, or to request any other relief, and nothing herein shall be deemed to be a waiver of the Debtors’ rights to object to the same.

Limited Stay Modification

12. The automatic stay provisions of section 362 are hereby modified for the limited purpose to permit (a) the Debtors and the DIP Agent to implement and perform the DIP Facility and the DIP Financing Documents, including without limitation the provisions thereof with respect to the collection of Proceeds, and the maintenance and implementation of the Collection Accounts and the Collection Procedures (as such terms are defined below), and (b) the creation and perfection of all Liens granted or permitted by [the Interim Order](#) or this ~~Interim~~[Final](#) Order. The Debtors and the holders of any DIP Lien, Pre-Petition ACM Adequate Protection Lien, or Second Lien Adequate Protection Lien shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such liens, or to file UCC financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Liens, which shall be and are deemed valid, binding, enforceable and automatically perfected by the docket entry of ~~this~~[the](#) Interim Order by the Clerk of the Court. If, however, the holder of any DIP Lien, Pre-Petition ACM Adequate Protection Lien, or Second Lien

Adequate Protection Lien in its sole and absolute discretion shall elect for any reason to enter into, file, record or serve any such financing statements or other documents with respect to any such Lien, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of ~~this~~the Interim Order by the Clerk of the Court. ~~Subject to~~Upon the entry of ~~the~~this Final Order, the holders of any DIP Lien, Pre-Petition ACM Lien, or Pre-Petition ACM Adequate Protection Lien are hereby relieved of any requirement to file proofs of claim in the Debtors' bankruptcy cases with respect to any such Liens and the claims secured thereby, but any such holder may in its sole and absolute discretion file any such proof of claim.

Carve-Out

13. The DIP Liens, DIP Superpriority Claims, Pre-Petition ACM Adequate Protection Liens, Pre-Petition ACM Liens, ~~Pre-Petition ACM Adequate Protection Liens~~, Liens held by the Second Lien Agent and Second Lien Lenders, and Second Lien Adequate Protection Liens shall be subject to right of payment of the following expenses (the following subparagraphs, collectively, the "Carve-Out," and all amounts payable in connection therewith, the "Carve-Out Amounts"):

A. unpaid postpetition fees and expenses of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) in such amount, with respect to the U.S. Trustee, as agreed to by the U.S. Trustee or as determined by the Court;

B. subject to the limits set forth in this ~~Interim~~Final Order, unpaid postpetition fees and expenses of professionals of the Debtors and professionals of ~~a Statutory~~the Committee ~~(if any)~~, which are retained by an order of the Court pursuant to sections 327, 328, 363 or 1103(a) of the Bankruptcy Code (the "Chapter 11 Professionals"), but only to the extent such fees and expenses are (i) incurred prior to a Termination Event, (ii) within

the amounts set forth in the Budget approved by the DIP Agent for such Chapter 11 Professional as of the date of the Termination Event, and (iii) subsequently allowed by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code;

C. postpetition fees and expenses of the Chapter 11 Professionals incurred after a Termination Event in an aggregate amount not to exceed \$40,000, to the extent such fees and expenses are subsequently allowed by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code; and

D. fees and expenses of any Chapter 7 trustee appointed in these cases after a Termination Event in an aggregate amount not to exceed \$10,000, to the extent such fees and expenses are allowed by the Bankruptcy Code and the Bankruptcy Court.

provided, however, that (a) the Carve-Out shall only be available to pay fees and expenses set forth herein to the extent that unencumbered funds are not otherwise available; and (b) in no event shall the Carve-Out for each Chapter 11 Professional exceed the amounts for postpetition fees set forth for such Chapter 11 Professional in the Budget as of the applicable date of determination provided, further however, that the Carve Out for Chapter 11 Professional fees shall first be paid from any retainers or any professional expense escrow account established by the Debtors. Any amounts paid from the DIP Collateral or the proceeds thereof, or funded by the DIP Agent or DIP Secured Parties with respect to the Carve-Out ~~prior to the entry of the Final Order~~ shall be ~~Interim~~ DIP Advances. As used in this ~~Interim~~Final Order, the term "Termination Event" shall mean the occurrence of the earlier of: (i) an Event of Default under the DIP Facility; or (ii) the Debtors' failure to comply with the terms of the DIP Financing Documents (including, without limitation, failure to comply with the Budget, subject to any approved variances). Further, the payment of the fees or costs of any Chapter 11 Professional ~~and/or Statutory Committee (if any)~~ shall be subject to

Court approval, and DIP Agent and the DIP Secured Parties reserve the right to object to any Chapter 11 Professional's application for payment.

Professional Fee and Carve-Out Limitations

14. Neither the payment of any Chapter 11 Professional fees, nor the Carve-Out shall include payment for any fees and expenses, if any, of the Chapter 11 Professionals incurred directly or indirectly, in respect of, arising from or relating to:

A. the initiation, joinder, or prosecution of any action contesting the indebtedness owed to DIP Secured Parties or the Pre-Petition ACM Secured Parties, or the validity of any liens granted to any of such parties, provided, however, that ~~a Statutory~~the Committee ~~(if any)~~ and its professionals shall be allowed to use the Committee Budget to investigate the validity of the Pre-Petition ACM Liens;

B. preventing, hindering or otherwise delaying (or supporting any other person or entity in preventing, hindering or otherwise delaying), whether directly or indirectly, the exercise by DIP Agent or Pre-Petition Agent of any of its rights and remedies under the Interim Order, this Final Order, Pre-Petition Loan Documents, or DIP Financing Documents, including, without limitation, any attempt to prevent, hinder or delay (or supporting any other person or entity in preventing, hindering or delaying) the submission of any credit bid by any of the DIP Secured Parties or Pre-Petition ACM Secured Parties; provided, however, nothing herein shall prevent ~~a Statutory~~the Committee from raising any objection to a sale motion or bid procedures motion;

C. the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against the DIP Secured Parties, Pre-Petition ACM Secured Parties, or any of their respective officers, directors, employees, agents, attorneys,

affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from the DIP Secured Parties or Pre-Petition ACM Secured Parties, or any of them;

D. any request to borrow money other than pursuant to the terms of the Interim Order, the Final Order, or the DIP Financing Documents;

E. ~~subject to~~ Upon the entry of ~~a~~ this Final Order, with respect to the Debtors, any of the Debtors' Chapter 11 Professionals, or any of their successors or assigns (including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors with respect to any matter to be released, waived or specified as not subject to challenge by the ~~Debtor~~ Debtors pursuant to ~~this~~ the Interim Order or ~~the~~ this Final Order (including, without limitation, Paragraphs 24, 25, and 26 herein); or

F. For any other purpose for which proceeds of the DIP Facility may not be used pursuant to the DIP Term Sheet.

Surcharge

15. ~~Subject to~~ Upon the entry of the Final Order, effective as of the time of commencement of the Debtors' bankruptcy cases on the Petition Date:

A. each of the Debtors waives irrevocably all claims and rights, if any, it or its estate might otherwise assert against the Pre-Petition Collateral or DIP Collateral pursuant to Bankruptcy Code sections 506(c), 105(a) or any other applicable law;

B. except from and pursuant to the terms of the Carve-Out, no entity in the course of the Debtors' bankruptcy cases shall be permitted to recover from the DIP Collateral (whether directly or through the grant of derivative or equitable standing in the name of the Debtors or any Debtor's estate) any cost or expense of preservation or disposition of the Pre-Petition Collateral or DIP Collateral, including, without limitation, expenses and charges as provided in Bankruptcy Code sections 506(c), 105(a), or any other applicable law;

C. except from and pursuant to the terms of the Carve-Out, no entity shall be permitted to recover from the DIP Collateral or Pre-Petition Collateral, or assert against any DIP Secured Party or any Pre-Petition ACM Secured Party, any claim with respect to any unpaid administrative expense of the Debtors' bankruptcy cases, whether or not the Debtors' payment of such administrative claim was contemplated by or included in the Budget; and

D. the Pre-Petition ACM Secured Parties and the DIP Secured Parties shall not be subject to the "equities of the case" exception of Bankruptcy Code section 552(b), or to the equitable doctrines of "marshaling" or any similar claim or doctrine, with respect to any DIP Collateral or Pre-Petition Collateral.

16. So long as the DIP Facility obligations remain outstanding, unless consented to in writing by the DIP Agent, the Debtors shall not seek entry of any further orders in their Chapter 11 Cases which authorize (a) under section 363 of the Bankruptcy Code, the use of Cash Collateral; (b) the obtaining of credit or the incurring of indebtedness pursuant to sections 364(c) or 364(d) of the Bankruptcy Code that does not repay the DIP Facility in full, in cash, (c) the return of goods pursuant to section 546(h) of the Bankruptcy Code to any creditor of the Debtors or to consent to

any creditor taking any setoff against any of such creditor's prepetition indebtedness based upon any such return pursuant to section 553 of the Bankruptcy Code or otherwise, or (d) except with respect to Senior Third Party Liens, any other grant of rights against the Debtors and/or their estates that is secured by a Lien in the DIP Collateral or is entitled to superpriority administrative status that does not repay the DIP Facility in full, in cash.

Remedies

17. **The remedies set forth in this paragraph may be exercised by the DIP Agent only after compliance with Rule 4001-4(c) of the Local Rules of this Court.** Upon the occurrence of: (i) an Event of Default (as such term is defined in the DIP Term Sheet); (ii) the Debtors' failure to comply with the terms of ~~this~~the Interim Order or ~~the~~this Final Order (including, without limitation, its failure to comply with the Budget, subject to any approved variances); or (iii) the Debtors' failure to comply with any of the Milestones set forth in the DIP Term Sheet, and the giving of written notice thereof by the DIP Agent to counsel to the ~~Debtor~~Debtors, the ~~Statutory~~-Committee ~~(if any)~~, and the U.S. Trustee (which notice may be given by any manner of electronic transmission, the automatic stay being deemed lifted for such purpose) (the "Default Notice"), then (i) the DIP Agent shall be fully authorized, in its sole discretion to cease making DIP Facility advances to the ~~Debtor~~Debtors, (ii) the DIP Agent shall be fully authorized, in its sole discretion to terminate the ~~Debtor's~~Debtors' use of the DIP Collateral (including without limitation Cash Collateral) pursuant to this ~~Interim~~Final Order and the Budget, and/or (iii) the DIP Agent shall be fully authorized, in its sole discretion to immediately terminate the DIP Facility and demand repayment of the DIP Facility obligations then outstanding. Additionally, the DIP Agent may issue demand on the Debtors to remit to the DIP Agent, subject to payment of the Carve-Out, any Cash Collateral then in the Debtors' possession for application

to the DIP Facility obligations and Pre-Petition ACM Obligations in a manner selected by the DIP Agent in its sole discretion.

18. **The additional remedies set forth in this paragraph may be exercised by the DIP Agent only after compliance with Rule 4001-4(c) of the Local Rules of this Court and upon the expiration of the Remedies Notice Period (defined herein).** Upon the occurrence of an Event of Default and transmission of a Default Notice or upon the Termination Date, but subject to the DIP Agent's compliance with Rule 4001-4(c) of the Local Rules of the Court:

A. the DIP Agent shall have the right, free of the restrictions of sections 362 or under any other section of the Bankruptcy Code or applicable law or rule (including, without limitation, Bankruptcy Rule 4001(a)), to take immediate reasonable action to protect the DIP Collateral from harm, theft and/or dissipation;

B. with respect to an Event of Default as to which a Default Notice has been given, the Debtors, the ~~Statutory~~ Committee ~~(if any)~~, and the U.S. Trustee shall have five (5) business days from the date of the Default Notice (the "Remedy Notice Period") to obtain an order of the Court on notice to the DIP Agent (a) enjoining or restraining the DIP Secured Parties from taking action or exercising rights and remedies (other than any rights and remedies set forth in Paragraph 17 herein, which may be exercised immediately upon the satisfaction of the conditions set forth in such paragraph) based upon the Event of Default specified in the Default Notice; or (b) challenging whether an Event of Default in the Default Notice has occurred or is continuing without cure (a "Restraint on Remedies"). During the Remedy Notice Period, the DIP Agent shall refrain from exercising its rights and remedies (other than those which may be exercised upon the satisfaction of the conditions set forth in Paragraph 17 and below). Immediately upon expiration of the

Remedy Notice Period unless a Restraint on Remedies has timely been obtained from the Court, or with respect to and upon the Maturity Date, immediately:

(1) the DIP Agent shall have the right, free of the restrictions of section 362 or under any other section of the Bankruptcy Code or Bankruptcy Rules (including, without limitation, Bankruptcy Rule 4001(a)), to exercise contractual, legal and equitable rights and remedies as to all or such part of the DIP Collateral as it shall elect, and to apply the Proceeds (as such term is defined below) of the DIP Collateral to the repayment of the DIP Facility obligations and Pre-Petition ACM Obligations; and

(2) the DIP Agent, should it so elect in its sole and absolute discretion as exercised by the filing of an appropriate statement with the Court, shall be deemed to have been granted “peaceful possession” of, and right of access to, all or any portion of the DIP Collateral, by the Debtors.

Reporting and Collateral Inspection

19. The Debtors shall provide the DIP Agent with (i) all financial statements, certificates, and reports required pursuant to the DIP Term Sheet in accordance with the timeframes specified therein and (ii) such additional information as the DIP Agent shall reasonably request from the Debtors. The DIP Agent and its representatives shall have reasonable access to the Debtors’ business premises and to the DIP Collateral in order to review and evaluate the physical condition of any of the DIP Collateral and/or to inspect the financial records and other records of the Debtors concerning the operation of the Debtors’ business.

Proceeds and Disposition

20. For purposes of this ~~Interim~~Final Order, (a) “Proceeds” shall mean both (i) proceeds (as defined in the Uniform Commercial Code for the State of New York) and (ii) any and all payments, proceeds or other consideration realized upon the sale, liquidation, realization, collection or other manner of disposition of the DIP Collateral, whether in the ordinary course of the Debtors’ business (including without limitation accounts, receivables, and other proceeds arising from the Debtors’ sales of goods and/or performance of services) or other than in the ordinary course of the Debtors’ business, and (b) “Disposition” shall mean any sale, liquidation, realization, collection or other manner of disposition of DIP Collateral other than in the ordinary course of the Debtors’ business, including without limitation any sale authorized pursuant to section 363.

Cash Management

21. The Debtors shall maintain in full force and effect the deposit, clearing, dominion, lockbox, and similar accounts maintained by or on behalf of the Debtors pursuant to Pre-Petition Loan Documents for the collection of Proceeds obtained in the ordinary course of the Debtors’ business (the “Collection Accounts”), and the cash management systems, treasury management systems, and payment procedures under which such accounts and systems are administered (the “Collection Procedures”). In furtherance of the foregoing, the DIP Agent shall be deemed to have control of all of the Debtors’ bank accounts, and any financial institutions in which such accounts of the Debtors are located are hereby authorized to act in accordance with any request of the DIP Agent concerning such accounts, including, without limitation, requests to turnover funds therein without offset or deduction of any kind.

22. ~~The Debtors (and, subject to the~~Upon entry of ~~at~~this Final Order, ~~the Debtors, and~~ any successors to the Debtors; ~~(~~including without limitation any successor trustee or trustees),

shall assign or direct to the DIP Agent any and all Proceeds realized in any Disposition of any DIP Collateral outside the ordinary course of business, and immediately deliver any and all such Proceeds which come into their possession to the DIP Agent in the form received; provided, however, that the foregoing shall be subject in all respects to (a) payment of the Carve-Out and (b) the priorities of the DIP Lien granted by this ~~Interim~~Final Order. The foregoing is without prejudice to the rights of (a) the DIP Agent, the ~~Statutory~~ Committee ~~(if any)~~, or any other party to object to any proposed Disposition, (b) any third party with respect to the allocated Proceeds of any Disposition of Collateral encumbered by a Senior Third Party Lien, or (c) the rights of third parties set forth below with respect to a Challenge Action and the remedies that may result from a successful Challenge Action. The DIP Agent and Pre-Petition Agent are hereby authorized to credit-bid all or any of the obligations under the DIP Facility and Pre-Petition Loan Documents at any Disposition of any Pre-Petition Collateral and/or DIP Collateral, including, without limitation, the 363 Sale.

23. All Proceeds retained by the DIP Agent shall be applied to the repayment of the Pre-Petition ACM Obligations and DIP Facility obligations, in a manner selected by the DIP Agent, until such obligations are paid in full; provided, however, that the foregoing shall be subject in all respects to the terms and the priorities of liens under this ~~Interim~~Final Order. Such applications of Proceeds shall be free and clear of any claim, charge, assessment or other liability.

Challenge Action

24. Subject to the right to bring a Challenge Action as set forth in Paragraph 27 below, ~~upon~~effective as of the date of entry of ~~this~~the Interim Order:

A. the Stipulations shall be binding upon the Debtors and all other persons, entities, and/or parties in all circumstances;

B. the validity, extent, priority, perfection, enforceability and non-avoidability of the Pre-Petition ACM Secured Parties' validly perfected prepetition claims and liens against the Debtors and the Pre-Petition Collateral shall not be subject to challenge by the Debtors or any other person, entity, or party; and

C. neither the Debtors, nor any other person, entity, or party shall seek to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtors to or for the benefit of any of the Pre-Petition ACM Secured Parties (or any of their predecessors in interest under the Pre-Petition Loan Documents) prior to the Petition Date.

25. In consideration of and as a condition to the DIP Secured Parties making the ~~Interim~~ DIP Advances and providing credit and other financial accommodations to the ~~Debtor~~ Debtors pursuant to the terms of this ~~Interim~~ Final Order and the DIP Financing Documents, each of the Debtors (each a "Releasor" and collectively, the "Releasors"), subject to Paragraph 27 herein, absolutely releases, forever discharges and acquits each of the Pre-Petition ACM Secured Parties and their respective successors and assigns, affiliates, officers, directors, employees, attorneys and other representatives (the "Releasees") of and from any and all claims, demands causes of action, damages, choses in action, and all other claims, counterclaims, defenses, setoff rights, and other liabilities whatsoever (the "Prepetition Released Claims") of every kind, name, nature, and description, whether known or unknown, both at law and equity (including, without limitation, any "lender liability" claims) that any Releasor may now or hereafter own, hold, have or claim against each and every of the Releasees related to the Pre-Petition Credit Agreement or other Pre-Petition Loan Documents (other than claims or causes of action based on the fraud, gross negligence, or willful misconduct of any Releasee) arising at any time prior to the entry of this

~~Interim~~Final Order; provided, however, that such release shall not be effective with respect to the Debtors until entry of the Final Order, and with respect to the Debtors' bankruptcy estates, until the expiration of the Challenge Period. In addition, upon the indefeasible payment, in full, in cash, of all DIP Facility obligations owed to the DIP Secured Parties arising under this ~~Interim~~Final Order and the DIP Financing Documents, the DIP Secured Parties shall be released from any and all obligations, actions, duties, responsibilities, and causes of action arising or occurring in connection with or related to the DIP Financing Documents.

26. ~~Subject to~~Upon entry of ~~the~~this Final Order, the Releasors hereby absolutely, unconditionally, and irrevocably covenant and agree with each Releasee that no Releasor will sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any Prepetition Released Claims released and discharged by any Releasor pursuant to this ~~Interim~~Final Order. If any Releasor violates this covenant, the Debtors agree, jointly and severally, to pay, in addition to such other damages allowed by law as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

27. Notwithstanding any other provisions of this ~~Interim~~Final Order, any interested party (other than the Debtors or their Professionals) in these cases (including, without limitation, the ~~Statutory~~ Committee ~~(if any)~~) shall have until forty-five (45) calendar days ~~(subject to enlargement at the request of any party and further order of the Court)~~ from the Petition Date (such period, the "Challenge Period"), to commence an adversary proceeding against the Pre-Petition ACM Secured Parties (as applicable) for the purpose (collectively, a "Challenge Action") of:

A. challenging the validity, extent, priority, perfection, enforceability and non-avoidability the Pre-Petition ACM Secured Parties' Liens (as applicable) against the Debtors;

B. seeking to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtors to or for the benefit of any of the Pre-Petition ACM Secured Parties, or any of their predecessors in interest under the Pre-Petition Loan Documents (as applicable) prior to the Petition Date;

C. seeking damages or equitable relief against any of the Pre-Petition ACM Secured Parties (as applicable) arising from or related to prepetition business and lending relationships of the Pre-Petition ACM Secured Parties or any of their predecessors in interest under the Pre-Petition Loan Documents with the Debtors, including without limitation equitable subordination, recharacterization, lender liability and deepening insolvency claims and causes of action; or

D. challenging any other matter to be waived or released pursuant to this ~~Interim~~Final Order (including, without limitation, pursuant to Paragraphs 24, 25, and 26).

28. All parties in interest, including without limitation the ~~Statutory~~ Committee ~~(if any)~~, that fail to act in accordance with the time periods set forth in the preceding paragraph shall be, and hereby are, barred forever from commencing a Challenge Action and shall be bound by the waivers, Stipulations, and terms set forth in this ~~Interim~~Final Order (including Paragraphs 24, 25, and 26 of this ~~Interim~~Final Order). Any Challenge Action filed shall prohibit application of this paragraph only to the extent of the specific matters set forth in such Challenge Action on the date of filing.

29. The respective legal and equitable claims, counterclaims, defenses and/or rights of offset and setoff of the Pre-Petition ACM Secured Parties in response to any such Challenge Action are reserved, and the ability of a party to commence a Challenge Action shall in no event revive, renew or reinstate any applicable statute of limitations which may have expired prior to the

date of commencement of such Challenge Action. Despite the commencement of a Challenge Action, the prepetition claims and Liens of the Pre-Petition ACM Secured Parties shall be deemed valid, binding, properly perfected, enforceable, non-avoidable, not subject to disallowance under section 502(d) of the Bankruptcy Code and not subject to subordination under section 510 of the Bankruptcy Code until such time as a final and non-appealable judgment and order is entered sustaining such Challenge Action in favor of the plaintiffs therein. Notwithstanding anything to the contrary contained in this ~~Interim~~Final Order, the Court expressly reserves the right to order other appropriate relief against the Pre-Petition ACM Secured Parties in the event there is a timely and successful Challenge Action by any party in interest to the validity, enforceability, extent, perfection or priority of the Pre-Petition ACM Liens or the amount, validity, or enforceability of the Pre-Petition ACM Obligations.

No Control by DIP Secured Parties

30. In making decisions to advance any extensions of credit to the Debtors pursuant to the DIP Facility or in taking any other actions reasonably related to the Interim Order, this ~~Interim~~Final Order, or the DIP Financing Documents (including, without limitation, the exercise of its approval rights with respect to any budget), the DIP Agent and the DIP Secured Parties shall have no liability to any third party and shall not be deemed to be in control of the operations of the ~~Debtor~~Debtors or to be acting as a “control person”, “responsible person” or other “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response Compensation and Liability Act, as amended, or any similar Federal or state statute), and the DIP Agent and the DIP Secured Parties’ relationship with the Debtors shall

not constitute or be deemed to constitute a joint venture or partnership of any kind between the DIP Secured Parties and the Debtors.

Binding Nature of ~~Interim~~Final Order

31. This ~~Interim~~Final Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Secured Parties, the Pre-Petition ACM Secured Parties, the Debtors, and, **subject to the**~~upon~~ entry of ~~the~~~~this~~ Final Order, their respective successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. Except as set forth herein with respect to a Challenge Action and the Carve-Out, no rights are created under this ~~Interim~~Final Order for the benefit of any creditor of the Debtors, any other party in interest in the Debtors' bankruptcy cases, or any other persons or entities, or any direct, indirect or incidental beneficiaries thereof.

Additional ~~Interim~~Final Order Provisions

32. Any order dismissing the Chapter 11 Cases under section 1112 or otherwise shall be deemed to provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the DIP Secured Parties' liens and security interests in the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP Facility obligations are indefeasibly paid and satisfied in full, in cash; and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, the DIP Liens, the Pre-Petition ACM Adequate Protection Liens, and the Pre-Petition ACM Adequate Protection Claims.

33. To the extent that any of the provisions of this ~~Interim~~Final Order shall conflict with any provisions of the DIP Term Sheet, or with any order of the Court authorizing the ~~Debtor~~~~Debtors~~ to continue the use of prepetition bank accounts, cash management systems,

treasury management systems, or business forms, or any similar orders, this ~~Interim~~Final Order is deemed to control and supersede the conflicting provisions therein.

34. The terms and conditions of this ~~Interim~~Final Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Fed. R. Bankr. P. 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements and/or stays imposed by Fed R. Bankr. P. 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause.

35. ~~Nothing in this Interim Order shall preclude the Court from entering a~~To the extent this Final Order ~~containing~~contains provisions inconsistent with or contrary to the provisions of ~~this~~the Interim Order, ~~provided, however, that~~ the DIP Secured Parties and Pre-Petition ACM Secured Parties shall be entitled to the benefits and protections of ~~this Interim Order, including:~~ (a) the adequate protection afforded to the Pre-Petition ACM Secured Parties set forth in ~~this~~the Interim Order, and (b) the protections afforded pursuant to section 364(e), with respect to all loans, advances, and other financial accommodations made by them pursuant to ~~this~~the Interim Order. The DIP Lien, the priority afforded the ~~Interim~~ DIP Advances, and the adequate protection afforded to the Pre-Petition ACM Secured Parties, as set forth in this ~~Interim~~Final Order, shall be binding on the Debtors and any successor trustee or trustees even if this ~~Interim~~Final Order is reversed or modified on appeal with respect to all loans, advances, and other financial accommodations made by them pursuant to ~~this~~the Interim Order or this Final Order. Except as provided herein, no Proceeds, Cash Collateral or Carve-Out may be used by any party in interest seeking to modify any of the rights granted to DIP Agent hereunder or in the DIP Financing Documents.

36. The Debtors and the DIP Agent may implement non-material modifications of the DIP Term Sheet solely with respect to the waiver or modification of an Event of Default without the need for notice or further approval of the Court, provided, however, that copies of such amendments will be provided to the U.S. Trustee and the ~~Statutory~~ Committee ~~(if any)~~. After notice and hearing, the Debtors and the DIP Agent may implement material modifications of the DIP Term Sheet as authorized by the Court.

37. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, and to pay all fees and expenses that may be required or necessary for the ~~Debtor~~Debtors's performance under this ~~Interim~~Final Order or the DIP Financing Documents, including, without limitation, (a) the execution of the DIP Financing Documents, (b) the payment of the fees and other expenses described herein or in the DIP Financing Documents as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees, and facility fees.

38. Notwithstanding anything to the contrary in this ~~Interim~~Final Order, with respect to any DIP Collateral located within property subject to a STORE Lease, the DIP Agent shall not exercise any remedies with respect to such DIP Collateral that are not permitted under the terms of the STORE Lease.

39. Notwithstanding anything to the contrary contained anywhere in this Final Order or in the DIP Financing Documents, DIP Term Sheet, Pre-Petition Credit Agreement, Pre-Petition Loan Documents, the Debtors' Stipulations, Second Lien Credit Agreement, Second Lien Loan Documents, or the Interim Order, this Final Order shall not be construed to prime, diminish, or impair the rights, if any, of Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc., to the extent such rights are validly preserved under the Perishable Agricultural Commodities Act, 7

U.S.C. 499e(c) (“PACA”). Accordingly, nothing contained in this Final Order shall be construed to require that Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc. must bring a Challenge Action during the Challenge Period to preserve any such rights. Furthermore, nothing contained in this Final Order shall be construed to waive the rights of Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc. to object to a credit bid by any party under 11 U.S.C. § 363(k) in connection with a sale of the Debtors’ assets absent escrow of sufficient funds to pay in full all valid, enforceable PACA trust claims asserted against the Debtors, as determined by the Court, all such rights of objection being expressly reserved. The Debtors, DIP Agent, and Pre-Petition ACM Secured Parties each reserve all rights with respect to the alleged PACA rights and claims of Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc.

40. ~~39.~~ The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtors to obtain credit on terms and conditions to which the Debtors and DIP Agent have agreed. Thus, each of the terms and conditions constitutes a part of the authorization under sections 364 of the Bankruptcy Code, and is, therefore, subject to the protections contained in section 364(e) of the Bankruptcy Code, regardless of (i) any stay, modification, amendment, vacation, or reversal of this ~~Interim~~Final Order or the DIP Financing Documents or any term hereunder or thereunder; or (ii) the ~~failure to obtain a final order pursuant to Bankruptcy Rule 4001(c)(2), or (iii) the~~ dismissal or conversion of ~~this chapter~~these Chapter 11 ~~ease~~cases.

~~40.— A final hearing with respect to the Motion is scheduled for December 18, 2018 at 9 a.m. (ET) (the “Final Hearing”) before the Honorable Helen E. Burris, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of South Carolina, 1100 Laurel St,~~

~~Columbia, SC 29201. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the following parties:~~

- ~~(i) the DIP Agent, the DIP Lenders, and the Pre-Petition ACM Secured Parties;~~
- ~~(ii) — Benefit Street Partners, L.L.P.~~
- ~~(iii) — Old Mill Stream, LLC~~
- ~~(iv) — the U.S. Trustee~~
- ~~(v) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis;~~
- ~~(vi) all parties known to the Debtors who hold any liens or security interest in the Debtors' assets who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors' knowledge, have asserted any liens on any of the Debtors' assets;~~
- ~~(vii) — the Internal Revenue Service and all taxing authorities of states in which the Debtors conduct business~~
- ~~(viii) — the U.S. Attorneys' Office for states in which the Debtors conduct business;~~
- ~~(ix) — all parties who are counterparties to the Debtors' unexpired leases of non-residential real property;~~
- ~~(x) — all parties with an open Accounts Payable balance with the Debtors as of the Petition Date;~~
- ~~(xi) — the Debtors' utility providers~~
- ~~(xii) — the Debtors' insurance providers~~
- ~~(xiii) — all parties who are counterparties to any litigation proceedings commenced against the Debtors as of the Petition Date.~~

41. Any party in interest objecting to the relief sought at the notice required to be provided under this Final ~~Hearing shall file written objections, and serve them on~~ Order shall be served on: (i) the ~~Debtor's~~ Debtors' proposed counsel, Haynes and Boone, LLP, attn: Ian T. Peck and J. Frasher Murphy, 2323 Victory Avenue, Suite 700, Dallas, TX 75219 and McNair Law Firm, P.A., attn: Robin Stanton and Michael Weaver, 104 South Main Street, Suite 700, Greenville, SC 29601; (ii) the DIP Secured Parties' counsel, Holland & Knight LLP, attn: Brent McIlwain, 200 Crescent Court, Suite 1600, Dallas, TX 75201 and ~~Holland & Knight LLP's Local Counsel,~~ Fox Rothschild, LLP, attn: Kevin McCarrell, 2 W. Washington St., Suite 1100, Greenville SC 29601; ~~and~~ (iii)(iii) counsel for the Committee, Pachulski Stang Ziehl & Jones LLP, attn: Bradford Sandler, 919 North Market Street, 17th Floor, Wilmington, DE 19801; and (iv) the Office of the

U.S. Trustee, 1835 Assembly Street, Suite 953, Columbia, SC ~~29201, on or before 4 p.m. (ET) on
December 11, 2018.~~ 29201.

42. The Debtors shall promptly mail copies of this Final Order to the same parties that
received service of the Interim Order as set forth in the Affidavits of Service filed on this Court's
docket at Docket Nos. 27, 28, and 105.

AND IT IS SO ORDERED.

Exhibit 1

DIP Term Sheet

(See Attached)

Exhibit 2

DIP Budget

(See Attached)

Document comparison by Workshare Compare on Monday, December 10, 2018
4:44:52 PM

Input:	
Document 1 ID	netdocuments://4835-3796-1850/7
Description	Cafe Enterprises - Interim DIP Order
Document 2 ID	netdocuments://4817-9919-0402/2
Description	Cafe Enterprises - Final DIP Order
Rendering set	Standard no moves

Legend:	
Insertion	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	196
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Moved to	0
Style change	0
Format changed	0
Total changes	369