

**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 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS
AND OFFICIAL COMMITTEE MEMBERS**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order establishing procedures for interim compensation and reimbursement of expenses for professionals and official committee members; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest and sufficient notice of the Motion having been given under the circumstances; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this proceeding and this Motion are properly in this district under 28 U.S.C. §§ 1408 and 1409; and after due deliberation and cause appearing therefore; and the Court having determined that the legal and factual bases set forth in the Motion have established just cause for the relief requested 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 Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

IT IS HEREBY ORDERED:

1. The Motion is GRANTED as set forth herein.
2. Except as may otherwise be provided in orders of the Court authorizing retention of specific professionals, all Professionals² in the chapter 11 cases may seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (the “**Compensation Procedures**”):

a. On or before the thirtieth (30th) day of each month (the “**Fee Filing Date**”) following the month for which compensation is sought (the “**Compensation Period**”), each Professional seeking interim compensation shall file with the Court a monthly application (each a “**Monthly Fee Statement**”) pursuant to section 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred, including any of those of Committee Members, during the Compensation Period. Each Professional and Committee Member shall serve the Monthly Fee Statement on:

- i. the Debtors: 4324 Wade Hampton Blvd., Suite B, Taylors, SC 29687, Attn: Eric Easton;
- ii. counsel for the Debtors: (i) Haynes and Boone, LLP, Attn: Ian T. Peck, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219; (ii) McNair Law Firm, P.A., Attn: Michael M. Weaver, P.O. Box 11390, Columbia, South Carolina 29211;
- iii. counsel to Atalaya Administrative LLC: (i) Holland & Knight, LLP, Attn: Brent McIlwain, 200 Crescent Court, Suite 1600, Dallas, TX 75201; (ii) Fox Rothschild, Attn: M. Kevin McCarrell, 2 W. Washington Street, Suite 1100, Greenville, South Carolina 29601-2784;
- iv. counsel to the Committee: Pachulski Stang Ziel & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Bradford J. Sandler;
- v. the Office of the United States Trustee: Attn: Elisabetta G. Gasparini, 1835 Assembly Street, Suite 953, Columbia, SC 29201 (collectively, the “**Notice Parties**”).

² Professionals includes Donlin, Recano & Company, Inc. in its capacity as Administrative Advisor to the Debtors.

b. Each Notice Party will have twenty-one (21) days after service of a Monthly Fee Statement to review the Monthly Fee Statement and object thereto (the “Objection Deadline”). Upon the expiration of the Objection Deadline, if no objections have been filed, the Professional and Committee Members shall file a certificate of no objection with the Court. The Debtors will then be authorized to pay each Professional and Committee Member eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in the Monthly Fee Statement (the “**Maximum Interim Payment**”); or

c. If an objection to a Monthly Fee Statement has been filed, the Professional and Committee Members shall be entitled to eighty percent (80%) of the fees and one hundred percent (100%) of the expenses not subject to objection pursuant to subparagraph (d) below (the “**Permitted Interim Payment**”).

d. If any Notice Party objects to the Monthly Fee Statement of a Professional or a Committee Member (the “**Affected Party**”), the Notice Party must file with the Court on or before the Objection Deadline a written statement of its objection setting forth the precise nature of the objection and the amount of objectionable fees and expenses at issue (collectively, the “**Objection**”) and serve the Objection on the Affected Party and each of the Notice Parties. Thereafter, the objecting party and the Affected Party may attempt to resolve the Objection on a consensual basis. If the parties are unable to resolve an Objection within 21 days after the service of the Objection, the Affected Party may either:

i. file with the Court a request for the payment of the difference, if any, between the Maximum Interim Payment and the Permitted Interim Payment made to the Affected Party (the “**Disputed Amount**”) and request a hearing of the Court; or

ii. forego payment of the Disputed Amount until the next Quarterly Fee Statement Request (as defined hereinafter) at which time the Court will consider and dispose of the Objection if so requested by the parties.

e. Each Professional and Committee Member may submit its first Monthly Fee Application by no earlier than December 31, 2018. For purposes of the period covering November 15, 2018 through December 31, 2018, each Professional and Committee Member may submit one Monthly Fee Application covering such period. Thereafter, the Professionals and Committee Members may file Monthly Fee Applications in the matter described above.

f. At three month intervals beginning with the period ending February 28, 2019, and at three-month intervals thereafter or at such other intervals as may be convenient to the Court (each, a “**Quarterly Fee Period**”), each Professional shall file with the Court and serve on the Notice Parties within thirty (30) days of the end of such Quarterly Fee Period a request (a “**Quarterly Fee Statement Request**”) for the Court’s interim approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the then outstanding balance due for compensation and reimbursement of expenses sought in the three Monthly Fee Statements filed during such Quarterly Fee Period. The Quarterly Fee Statement

Request must include a summary of the Monthly Fee Statements that are the subject of the request plus any other information requested by the Court or required by the Local Rules and the total amount of fees and expenses to be approved and paid with the Quarterly Fee Statement Request. The first Quarterly Fee Statement Request shall cover the period between the Petition Date and February 28, 2019. Any Professional that fails to file a Quarterly Fee Statement Request when due will be ineligible to receive further interim payments of fees and expenses under the Compensation Procedures until such time as the Professional submits the Quarterly Fee Statement Request.

g. The pendency of an Objection to a Monthly Fee Statement or Quarterly Fee Statement will not disqualify a Professional or Committee Member from the future payment of compensation or reimbursement of expenses under the Compensation Procedures.

3. All Quarterly Fee Statement Requests and final fee applications filed with the Court shall comply with the Bankruptcy Code, the Bankruptcy Rules, Local Bankruptcy Rules, the UST Guidelines, and applicable Fourth Circuit Law.

4. Neither (1) payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures, nor (2) the filing of or the failure to file an Objection will bind any party in interest or bind the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.

5. The absence of any objection by the United States Trustee or any other party-in-interest to any Professional's or Committee Member's Monthly Statements shall be without prejudice to the rights of the United States Trustee or any party-in-interest to file an objection to any professional's Quarterly Fee Statement Request.

6. A Professional shall not seek payment in a Final Fee Application for any amounts that such professional previously sought in a Monthly Fee Statement or Interim Fee Application and which (x) such Professional voluntarily waived or reduced to resolve formal or informal objections or (y) were disallowed by order of the Court.

7. All fees and expenses paid to Professionals and Committee Members under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

8. Each member of any Committee is permitted to submit statements of expenses (excluding individual Committee Member's counsel expenses) and supporting vouchers to counsel to any such Committee, which shall collect and submit the Committee Members' requests for reimbursement in accordance with the Compensation Procedures.

9. The Monthly Fee Statements and Quarterly Fee Statement Requests shall be sent only to the Notice Parties.

10. Any hearing notices shall be sent to: (a) the Notice Parties and (b) all parties on the Core/2002 Service List.

11. The Debtors shall include in their monthly operating reports all payments to Professionals and Committee Members in accordance with the Compensation Procedures detailed so as to state the amount paid to each of the Professionals and Committee Members.

12. 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.

13. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

AND IT IS SO ORDERED.