

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

CAFE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-05837 (hb)

(Jointly Administered)

**ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN
DUFF & PHELPS SECURITIES, LLC AS INVESTMENT BANKER
TO THE DEBTORS AND DEBTORS IN POSSESSION
NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “**Application**”)² of the above-captioned debtors and debtors in possession (“**Debtors**”), for entry of an order (the “**Order**”) pursuant to sections 327(a) and 328 of title 11 of the United States Code (the “**Bankruptcy Code**”) authorizing the Debtors to employ and retain Duff & Phelps Securities, LLC (“**Duff & Phelps**”) as investment banker for the Debtors on the terms set forth in the engagement agreement (the “**Duff & Phelps Agreement**”) annexed to the Application as **Exhibit C**; and upon the Declaration of Vineet (“**Vin**”) Batra (the “**Batra Declaration**”), attached to the Application as **Exhibit B** and the Supplemental Declaration of Vineet Batra filed on January 8, 2019, and considering the objection to the Application filed by the Office of the United States Trustee [Docket No. 255] (the “**Objection**”) and the resolution of the Objection announced on the record during the hearing on the Application, it appearing that the relief requested therein is in the best interests of the Debtors’ estates, its creditors and other parties in interest; and it appearing that the Court has jurisdiction over this matter pursuant to 28

¹ 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 such terms in the Application.

U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Application was appropriate under the circumstances and that no other or further notice need be given; and the Court being satisfied that Duff & Phelps is a “disinterested person” as such term is defined under section 101(14) of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED:

1. The Application is granted *nunc pro tunc* to the Petition Date as set forth herein.
2. The Debtors are authorized, pursuant to 11 U.S.C. §§ 327(a) and 328(a), to employ and retain Duff & Phelps as investment banker on the terms set forth in the Duff & Phelps Agreement.
3. The terms of the Duff & Phelps Agreement, as modified by the Application, are reasonable terms and conditions of employment and are hereby approved.
4. Duff & Phelps shall be compensated under the Duff & Phelps Agreement for the services it provides, and reimbursed for any related expenses, in accordance with 11 U.S.C. § 328(a) of the Bankruptcy Code, the Local Rules for this Court, and any procedures as fixed by further order of this Court. Except as set forth below, the final fee application filed by Duff & Phelps shall be subject to review only pursuant to the standard of review set forth in section 328 of the Bankruptcy Code, and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code.
5. Notwithstanding any provision to the contrary in this Order, the U.S. Trustee shall have the right to object to Duff & Phelps’ request(s) for compensation based on the reasonableness standard provided in section 330 of the Bankruptcy Code. This Order and the record relating to the Court’s consideration of the Application shall not prejudice or otherwise affect the right of the

U.S. Trustee to challenge or the reasonableness of Duff & Phelps' fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Duff & Phelps' fees.

6. Duff & Phelps shall not be required to file interim fee applications in order to receive its Monthly Fees (as defined in the Duff & Phelps Agreement) but shall file a final fee application that sets forth a summary of all fees earned and expenses reimbursed in these chapter 11 cases, including any fees paid on a monthly basis. Duff & Phelps shall include in its fee application, among other things, time records setting forth, in a summary format with sufficient detail to determine reasonableness of fees, a description of the services rendered by each professional, broken out by task, and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in half hour increments. Other than Monthly Fees, no fees shall be paid to Duff & Phelps prior to Court approval of Duff & Phelps' fee application described in this paragraph.

7. Notwithstanding the terms of the Duff & Phelps Agreement, Duff & Phelps (i) will not require compensation for testimony in these cases unless the requisite testimony exceeds the scope of the Debtors' financing, bid procedures, and sale motion, in which case the Debtors will file a request for an expansion of the Duff & Phelps' engagement; (ii) will not seek payment of a Financing Fee (as defined in the Duff & Phelps Agreement) based on the Debtor's debtor-in-possession financing; (iii) will not under any circumstances be entitled to both a Sale Transaction Fee and a Restructuring Fee (as both terms are defined in the Duff & Phelps Agreement); and (iv) shall not seek reimbursement of any fees or costs of its counsel arising from the prosecution or defense of any of Duff & Phelps' fee statements or fee applications in these Chapter 11 cases.

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

9. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062 and 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. Duff & Phelps shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Duff & Phelps Agreement, unless and until such indemnification, contribution, or reimbursement is approved by the Court.

11. In the event of any inconsistency among the Duff & Phelps Agreement, the Application, and this Order, this Order shall govern.

12. Notwithstanding anything to the contrary herein, any payments authorized to be made pursuant to this 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.

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

AND IT IS SO ORDERED

FILED BY THE COURT

01/09/2019



US Bankruptcy Judge
District of South Carolina

Entered: 01/09/2019

Certificate of Notice Page 5 of 6
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: Jan 09, 2019
Form ID: pdf01 Total Noticed: 1

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on
Jan 11, 2019.

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: Jan 11, 2019

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 January 9, 2019 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;joan.kishline@nelsonmullins.com;
frank.knowlton@nelsonmullins.com;shane.ramsey@nelsonmullins.com;bsandler@pszjlaw.com
Christine E Brimm on behalf of Creditor Betty B. Tyson cbrimm@bartonbrimm.com,
cfraser@bartonbrimm.com,bbarton@bartonbrimm.com
Christine E Brimm on behalf of Creditor William L. Barrier cbrimm@bartonbrimm.com,
cfraser@bartonbrimm.com,bbarton@bartonbrimm.com
Christine E Brimm on behalf of Creditor Robert B. Barrier cbrimm@bartonbrimm.com,
cfraser@bartonbrimm.com,bbarton@bartonbrimm.com
Christine E Brimm on behalf of Creditor Joel A. Tyson cbrimm@bartonbrimm.com,
cfraser@bartonbrimm.com,bbarton@bartonbrimm.com
Christine E Brimm on behalf of Creditor CGD Real Estate Tennessee, LLC cbrimm@bartonbrimm.com,
cfraser@bartonbrimm.com,bbarton@bartonbrimm.com
Christine E Brimm on behalf of Creditor B&T Sand Company, Inc. cbrimm@bartonbrimm.com,
cfraser@bartonbrimm.com,bbarton@bartonbrimm.com
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phxdocketingbkr@ballardspahr.com,hartt@ballardspahr.com
Craig Solomon Ganz on behalf of Creditor STORE Master Funding V, LLC ganzc@ballardspahr.com,
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Daniel K Felker on behalf of Creditor Bruce Dressler dan@hucksandfelker.com,
brandy@hucksandfelker.com
David Brian Wheeler on behalf of Creditor M&R Investors, LLC davidwheeler@mvalaw.com
David Brian Wheeler on behalf of Creditor MRB, LLC davidwheeler@mvalaw.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
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Eugene B. McLeod, III on behalf of Creditor South Carolina Department of Employment and
Workforce ecf@dew.sc.gov, tmcleod@dew.sc.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
Jane H. Downey on behalf of Creditor Vandelay, LLC jane@mttlaw.com,
jessica@mttlaw.com;corey@mttlaw.com
John Timothy Stack on behalf of U.S. Trustee US Trustee's Office John.T.Stack@usdoj.gov
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District/off: 0420-7

User: richardso
Form ID: pdf01

Page 2 of 2
Total Noticed: 1

Date Rcvd: Jan 09, 2019

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

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
Michael H. Weaver on behalf of Debtor Cafe Holdings Corp. mweaver@burr.com,
khandrock@burr.com
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
Reid E. Dyer on behalf of Creditor Old Mill Stream, LLC reiddyer@mvalaw.com
Reid E. Dyer on behalf of Creditor MRB, LLC reiddyer@mvalaw.com
Reid E. Dyer on behalf of Creditor M&R Investors, LLC reiddyer@mvalaw.com
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Stanley H. McGuffin on behalf of Creditor Store Master Funding I, LLC
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Stanley H. McGuffin on behalf of Creditor STORE Master Funding V, LLC
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dhayes@mcnair.net

TOTAL: 36