

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

In re:	)	Chapter 11
	)	
CAFÉ HOLDINGS CORP., <i>et al.</i> , <sup>1</sup>	)	Case No.: 18-05837 (hb)
	)	
Debtors.	)	(Jointly Administered)

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS'  
STATEMENT IN SUPPORT OF DEBTORS' (A) MOTION FOR ENTRY OF AN  
ORDER APPROVING SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR  
OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B)  
MOTION FOR ENTRY OF AN ORDER APPROVING GLOBAL SETTLEMENT, AND  
(C) MOTION FOR ENTRY OF AN ORDER (I) DISMISSING CHAPTER 11 CASES  
UNDER CERTIFICATION OF COUNSEL AND (II) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 cases of the above-captioned Debtors submits this statement in support of the Debtors' (a) *Expedited Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (III) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief* [Docket No. 106] (the "Sale Motion"); (b) *Motion for Entry of An Order Approving Global Settlement* [Docket No. 357] (the "Settlement Motion"); and (c) *Motion for Entry of An Order (I) Dismissing The*

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<sup>1</sup> 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.

*Debtors' Chapter 11 Cases Under Certification of Counsel and (II) Granting Related Relief*  
[Docket No. 359] (the "Dismissal Motion") (collectively, the "Motions").<sup>2</sup>

### **Preliminary Statement**

1. Together, the Motions embody a global resolution of the Committee's objections to the DIP Financing Motion (defined below) and the Sale Motion. More importantly, however, the Motions embody a consensual strategy that will result in the continuation of a beloved, thirty-year old South Carolina-based restaurant chain that has fallen on hard times, Fatz Cafe, which will continue to employ over a thousand people who are predominately paycheck to paycheck employees and provide a continuing customer to hundreds of vendors and a tenant to numerous landlords. If the Court approves the Motions, then instead of lingering in a chapter 11 (for which the Debtors have no source of ongoing financing) or liquidating in a chapter 7, the Debtors' assets will be sold, and allowed administrative and priority claims will be paid in full; employees will have jobs; landlords will have a tenant, and trade vendors will have a customer. This is a case in which the bankruptcy process worked to save jobs, and the global resolution will allow a fresh start to the Debtors. Indeed, rather than seeing value dissipate to professional fees arising from litigation, value is being preserved and maximized through a consensual resolution.

2. Indeed, if the Court approves the Motions, Fatz Cafe will emerge from these cases alive, with a rationalized footprint, unencumbered by the bloated secured debt and unsecured debt that it incurred as a result of the decade old leveraged buyout. The Committee, which was the architect of the global settlement, has negotiated in good faith with the other constituencies to obtain the best outcome possible for trade creditors, employees, and landlords and has obtained certain enhancements (described in detail below). Given the Debtors' inability, pre-bankruptcy,

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motions.

to attract a buyer or additional equity or debt financing, the fact that it has hard assets of less than \$7 million and its prepetition secured debt alone is approximately \$11.7 million, paying administrative and priority claims and preserving this legacy chain through the proposed sale is a successful outcome for these cases. Accordingly, the Committee joins in the Motions and asks that this Court approve the Motions.

### **The Background**

3. On November 16, 2018, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 15] (the "DIP Financing Motion").

4. On the November 30, 2018, the Debtors filed the Sale Motion. Pursuant to the Sale Motion, the Debtors seek to sell substantially all of their assets to their Pre-Petition Lender and DIP Lender Atalaya Capital Management, LP or its affiliates ("Atalaya" or "Buyer") or a qualified overbidder for (a) \$4.2 million of non-cash consideration, comprised of a \$1,000,000 credit bid of its Pre-Petition Credit Facility and the assumption of the \$3.2 million DIP Facility; (b) the assumption of certain Accounts Payable, and (c) the assumption of certain Executory Contracts and Unexpired Leases.

### **The Settlement**

5. The Committee objected to both the DIP Financing Motion and the Sale Motion on several bases. *See* Docket Nos. 205 and 243. Over the course of November and December, 2018, the Committee, the Debtors and the Buyer negotiated, in good faith, to resolve the

Committee's Objections. On or around January 15, 2019, the parties reached the agreement which is embodied in the Term Sheet attached to the Settlement Motion.

6. As is set forth in the Term Sheet, the Committee has agreed to withdraw its objections to the Sale Motion and the DIP Financing Motion and to support the entry of final orders approving the Motions that are consistent with the Term Sheet. The Term Sheet is part and parcel of the overall agreement and the global resolution of these cases, which the Committee believes is the best deal that can be struck for its constituents, given the dire circumstances in which the Debtors and the unsecured creditors find themselves, without the liquidity to operate or the ability to borrow upon the expiration or termination of the DIP Facility. Each is addressed below.

**A. Benefits for the Committee's Constituents.**

7. Cure Payments. By its *Notice of Cure Amounts and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases* (the "Assumption Notice") [Docket No. 355], the Debtors identified 36 store leases (the "Store Leases") and the lease on its corporate headquarters for potential assumption with cure amounts totaling \$3,462,721. Additionally, pursuant to the Assumption Notice, the Debtors identified numerous executory contracts for proposed assumption with cure amounts totaling \$3,251,966. To the extent that the Sale Motion is approved and the Store Leases and contracts are assumed and assigned to the Buyer, these cure amounts will be paid by the Buyer pursuant to the terms of the order approving that Sale Motion.<sup>3</sup>

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<sup>3</sup> As of the date of this filing, the Buyer is currently evaluating which executory contracts will be assumed and assigned. Additionally, it is the Committee's understanding that Cure Amounts are currently being negotiated among the Debtors and Contract Counterparties.

8. DIP Advances. The Term Sheet provides that the DIP Lender will provide sufficient advances under the DIP Facility to: (a) pay **all** allowed stub rent claims in full (11 U.S.C. § 365(d)(3)) (the “Stub Rent Claims”), (b) pay **all** allowed 20-day delivery claims under Bankruptcy Code § 503(b)(9) (the “503(b)(9) Claims”); and (c) pay **all** allowed administrative claims set forth in the Final DIP Order Budget, including but not limited to, the allowed fees and expenses of the Chapter 11 Professionals (the “Other Administrative Claims”), and (d) pay all 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 (the “UST Fees”). While the precise amount of the Stub Rent Claims, the 503(b)(9) Claims, the Other Administrative Claims, and the UST Fees has not yet been fully determined, landlords and vendors both benefit from this provision.<sup>4</sup>

9. Avoidance Actions. Under the original Sale Motion, the Debtors sought to sell the avoidance actions to the Buyer. The *Statement of Financial Affairs* for Debtor Cafe Enterprises (the only operating company) [Docket No. 31] shows approximately \$8 million in payments to creditors made during the 90 days prior to the Petition Date (the “Potential Preferences”). Under the original Sale Motion, unsecured creditors would receive no benefit from these Potential Preferences, but rather, to add insult to injury, the Buyer could turn around and sue the recipients and retain any recoveries. The Committee negotiated for a covenant that provides that upon the sale closing, the Buyer shall not (i) prosecute avoidance actions, (ii) assign or convey any avoidance actions, or (iii) use any such avoidance actions for defensive

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<sup>4</sup> The majority of Stub Rent Claims will be paid in connection with the cure of assumed Store Leases. To the extent that a Store Lease is rejected, the Stub Rent Claim will be paid after a determination in connection with the Claims Motion. 503(b)(9) Claims will be determined in connection with the Claims Motion.

purposes. In other words, the Committee's constituents will not be sued for Potential Preferences (or other avoidance actions).

**B. Benefits for the Debtors' Employees and Management.**

10. As a part of the settlement, the Debtors and the Committee also obtained some concessions from the Buyer that benefit the Debtors' employees and management.

11. Employment Causes of Action. The acquired assets under the APA shall include any rights, demands, claims, or causes of action that relate to any claim against any employee, officer, or director of the Debtors (collectively, "Employment Causes of Action"); provided, however, that upon the sale closing, the Buyer shall not prosecute any such Employment Causes of Action, other than Employment Causes of Action based upon fraud, theft, or willful misconduct, to the extent any exist.

12. DIP Advances. The Term Sheet provides that the DIP Lender will provide sufficient advances under the DIP Facility to: (a) enable the Debtors to retain "D&O" tail coverage of at least six years under the Debtors' current D&O liability policy and (b) and fund the total amount of payments to be made under an executive bonus compensation plan for the Debtors' executives and senior management (the "Executive Bonus Compensation Plan"). The funding of the Executive Bonus Compensation Plan is a condition to closing and will ensure that the Debtors have continuity of management going forward.

**The Committee Supports the Sale Motion, Settlement Motion, and Dismissal Motion**

13. There are several reasons this Court should approve the Settlement Motion, authorize the sale to the Buyer, and dismiss these cases pursuant to the Dismissal Motion.

**A. The Only Viable Alternative.**

14. In the Sale Motion, the Debtors describe in detail their pre-petition efforts to sell the company and/or its assets and to attract financing. There is simply no other party willing to

(a) finance this company through chapter 11 and (b) buy its assets with a view to continuing this thirty-year-old South Carolina legacy brand. These cases almost filed for bankruptcy under chapter 7 of the Bankruptcy Code, which would have been value destructive to the 1,700 employees, hundreds of vendors and the Debtors' landlords. Furthermore, the bidding and auction procedures approved by this Court post-petition in connection with the Sale Motion [Docket 335] effectively guaranteed that if there was a better deal to be struck, parties in interest could identify such a deal and pursue it. However, February 4, 2019 was the bid deadline set under the bidding procedures, and no other bidder came forward, despite post-petition marketing by the Debtors' investment banker.

**B. Approval of the Sale will Save Jobs for Up to 1,700 Employees.**

15. Thirty-six Store Leases are identified on the Cure Notice. While the Buyer is not required to assume all of the Store Leases on the Cure Notice, their inclusion at this late date (coupled with the fact that the Buyer has obligated itself to pay all Stub Rent Claims) signals the Buyer's willingness to keep many, if not all, of the Fatz Cafes open after closing the proposed sale, which could save the jobs of up to approximately 1,700 employees, many of whom live paycheck to paycheck. Fatz Cafes are located in small southern cities and the prospect of these stores being allowed to operate and be sold is a welcome result for employees at these locations.

16. The alternative to the proposed sale, settlement and dismissal is a liquidation in which all the employees in these small, economically-challenged cities lose their jobs.

**C. Landlords Will have a Tenant.**

17. Approving the sale and the Motions could keep up to 36 Fatz Cafes open, operating, and paying rent to landlords who would otherwise be left with unpaid damages for breached leases. Again, the alternative is a liquidation in which all of the leases are rejected, and

none of the landlords are paid either their Stub Rent Claims or cures. Furthermore, a liquidation would create huge dilution to all unsecured creditors as the size of the rejection damage claim pool would skyrocket from all of the leases being rejected.

**D. Vendors Will have a Customer.**

18. Approving the sale, settlement and dismissal could keep 36 Fatz Cafes open, operating and buying everything from food supplies to paper products from vendors who would otherwise be left with large unsatisfied payables and no future business from a major customer. Some vendors have executory contracts or other payables that may be assumed by Buyer. If Buyer assumes all of the executory contracts identified on the Cure Notice, it will pay an additional \$3,251,966 in consideration to cure defaults. While Buyer may not assume all of the contracts or payables, the alternative to the proposed sale, settlement and dismissal is a liquidation in which all of the contracts are rejected and invoices remain unpaid, which similar to the leases, would further increase the size of the unsecured claim pool making any recovery *de minimis* at best. Even if Buyer assumes only a fraction of the Debtor's pre-petition vendor payables, the vendors who choose to do business with Buyer going forward will, at the very least, continue to have a customer for their products.

**E. Unsecured Creditors Fare Far Better in a Sale than in a Chapter 7 Liquidation.**

19. There is no question that unsecured creditors are far better off under the Motions and settlement as proposed, which paves the path for an efficient and cost-effective exit to these cases while maximizing value. In a chapter 7, the secured debt would be paid only cents on the dollar, and priority unsecured debt, funded unsecured debt, trade, landlords and other unsecured creditors would likely see no recovery. In the sale and dismissal scenario, however, Stub Rent Claims are paid, 503(b)(9) Claims are paid, Other Administrative Claims are paid, cures will be

paid on assumed executory contracts and Store Leases, vendors and landlords will have a prospective business partner going forward, and employees will not go unemployed.

Accordingly, the Committee supports the Sale Motion and the Settlement Motion.

20. The Committee also supports the Dismissal Motion. The Debtors are selling all of their assets and operations. After the sale closes, the Debtors have requested relief from the Court to: (a) liquidate the Other Administrative Claims, 503(b)(9) Claims, PACA Claims and Stub Rent Claims pursuant to the procedures requested in the *Debtors' Motion for Entry of an Order Establishing Procedures for Allowance, Settlement, and Payment of Certain Administrative and PACA Claims* [Docket No. 358] (the "Claims Motion"), (b) pay those claims from the DIP Advances once allowed, and (c) pay allowed professional fees, once approved. There is no value to preserve, no on-going business to conduct and no assets available for distribution to general unsecured creditors either in a chapter 11 plan or in a chapter 7, and no money to fund either one. Under these circumstances, there is no benefit to going through the plan confirmation process. Furthermore, because the estate does not have any remaining unencumbered assets, there would be no role for a chapter 7 trustee, and no reason to convert these cases, which would be "no asset" cases. Accordingly, the Committee supports the dismissal of these cases pursuant to Bankruptcy Code section 1112(b)(4)(A).

### **Conclusion**

For the reasons set forth above, the Committee asks this Court to approve the Sale Motion, the Settlement Motion, and the Dismissal Motion.

Dated: February 5, 2019

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