

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re

CAFE HOLDINGS CORP., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-05837(hb)

(Jointly Administered)

**DECLARATION OF EVERETT INDART IN SUPPORT OF SALE OF  
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS REGARDING ADEQUATE  
ASSURANCE OF FUTURE PERFORMANCE OF TRANSFERRED CONTRACTS**

I, Everett Indart, make this Declaration, under the penalty of perjury, pursuant to 28 U.S.C.

§ 1746, and state as follows:

1. I am a Senior Asset Manager at Atalaya Capital Management LP (together, with its wholly owned subsidiaries (direct and indirect), affiliates, arranged funds and investment vehicles, agents, independent contractors, and employees, "**Atalaya**." I was one of the members of the Atalaya team responsible for negotiating the Asset Purchase Agreement by and among ACM Fatz VII LLC ("**ACM Fatz**"), as Buyer, and Cafe Holdings Corp., Cafe Enterprises, Inc., CE Sportz LLC, and CES Gastonia LLC (collectively, the "**Debtors**"), as Sellers, which is scheduled for consideration by the U.S. Bankruptcy Court for the District of South Carolina on February 12, 2019 (as may be amended or supplemented from time to time, the "**Fatz APA**"). I am also one of the Atalaya team members responsible for the implementation and performance of ACM Fatz under the Fatz APA.

2. I submit this declaration in support of the Debtors' proposed *Order (A) Approving Asset Purchase Agreement and Authorizing the Sale of Assets of the Debtors Outside the Ordinary Course of Business Free and Clear of all Liens, Claims, Encumbrances and Interests, (B) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (the "**Sale Order**").

3. Unless otherwise stated, all matters set forth in this Declaration are based on (a) my personal knowledge, (b) my review of relevant documents, (c) information supplied to me by employees at the Debtors, (d) my views, based upon my experience and knowledge of the Debtors' business and financial condition, or (e) as to matters involving United States bankruptcy laws or rules or other applicable laws, my reliance on counsel.

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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.

### **Background on Atalaya**

4. Atalaya is a New York based, SEC registered, alternative investment advisory firm that focuses on making private credit and special opportunity investments. ACM Fatz is a wholly-owned subsidiary and affiliate of Atalaya Special Opportunities Fund VII LP (“**Atalaya Fund VII**”). Atalaya has currently raised more than \$564 million of funds for Atalaya Fund VII, with the expectation of ultimately raising up to approximately \$950 million when fundraising is complete.

5. Atalaya has extensive experience making investments in businesses from a wide array of industries. In the past Atalaya has successfully acquired, and operated, restaurant and other food service related businesses. Some of those restaurant enterprises were in similar states of financial difficulty as the Debtors (including bankruptcy), and Atalaya successfully improved the operational performance of such businesses.

### **Atalaya’s Investment in the Debtors**

6. Before commencement of the Debtors’ bankruptcy proceedings, the Debtors were party to a senior, secured credit facility for which Madison Capital Funding LLC (“**Madison Capital**”) served as administrative agent (the “**Prepetition Credit Facility**”). The Prepetition Credit Facility was secured by liens on substantially all of the Debtors’ assets.

7. In late 2018, Atalaya was presented with an opportunity to invest in, and acquire ownership of, the outstanding notes and other loans furnished under the Prepetition Credit Facility. At that time, numerous events of default under the Prepetition Credit Facility had occurred.

8. Atalaya evaluated the potential investment in the Prepetition Credit Facility with the assistance of representatives from Falcon Holdings Management (“**Falcon**”). Falcon is a restaurant management company with almost 20 years of experience managing an array of fast service and casual dining restaurant locations, with brands including Church’s Chicken, Long John Silvers, and Piccadilly Cafeterias. Atalaya has previously worked with Falcon to improve the performance of a restaurant enterprise experiencing financial distress.

9. Atalaya ultimately elected to acquire the outstanding the Prepetition Credit Facility loans. In making the decision to acquire the Prepetition Credit Facility loans, Atalaya intended (and continues to intend) for Falcon to serve as a valued operating partner for the Fatz restaurants to be purchased by ACM Fatz and will continue to use Falcon’s services and expertise in improving the operational performance of the purchased Fatz restaurants.

10. In order to facilitate that acquisition, it created a new Atalaya affiliate, ACM Fatz, to hold the Prepetition Credit Facility interests purchased. ACM Fatz purchased such interest in the Prepetition Credit Facility prior to the commencement of the Debtors’ bankruptcy proceeding and continues to own 100% of the Prepetition Credit Facility loans as of the date hereof.<sup>2</sup>

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<sup>2</sup> ACM Fatz purchased those Prepetition Credit Facility loans from Shrayne Capital LLC, which had purchased such loans from Madison Capital.

11. ACM Fatz evaluated its investment in the Prepetition Credit Facility with the expectation that additional investment in the Debtors, beyond the amounts advanced and available under the Prepetition Credit Facility, would be required.

12. Additionally, at the time that ACM Fatz was evaluating its investment in the Debtors, excess levels of long term indebtedness and uneconomical, undesirable lease obligations were materially straining the Debtors' financial performance. Accordingly, ACM Fatz expected that any investment in the Debtors would have to be accomplished in a manner that would allow the Debtors to right size their debt structure, real property footprint, and lease exposure.

13. The Debtors did not (and do not) own any of their store locations, and instead lease their store locations from many different landlords pursuant to numerous different lease agreements. ACM Fatz believed that the Debtors' exposure to multiple landlords would make serialized negotiations with such landlords administratively unworkable.

14. Following ACM Fatz' purchase of the Prepetition Credit Facility, the Debtors required access to additional capital, beyond the amounts available under the Prepetition Credit Facility.

#### **The Debtors' Bankruptcy Proceeding, Postpetition Financing Facility, and Asset Sale**

15. In connection with the Debtors' proposed bankruptcy filing, ACM Fatz agreed to provide additional capital to the Debtors via a postpetition, senior secured credit facility (the "**DIP Facility**"). The DIP Facility contemplates that ACM Fatz would provide the Debtors with up to an additional \$3.2 million of capital in order to fund the Debtors' ongoing operations during their bankruptcy proceedings, satisfy cure costs, and fund other payments to the Debtors' unsecured creditors required under a "global settlement" for resolution of these cases negotiated by the Debtors and the Official Committee of Unsecured Creditors. All DIP Facility advances are subject to the terms of an Atalaya approved budget.

16. In connection with the commencement of the Debtors' bankruptcy proceedings, ACM Fatz also agreed to serve as the "stalking horse" bidder to acquire substantially all of the Debtors' assets. The terms of that offer are set forth in the Fatz APA. In general, the purchase price to be paid by ACM Fatz for such assets consists of a "credit bid" of \$1 million of the Prepetition Credit Facility obligations and the assumption by ACM Fatz of the Debtors' DIP Facility obligations.

17. ACM Fatz was not willing to extend further credit to the Debtors outside of a bankruptcy proceeding. Additionally, ACM Fatz was not, and is not, willing to consider acquiring the Debtors' assets in a non-bankruptcy proceeding.

#### **Acquisition of Transferred Contracts and Adequate Assurance of Future Performance**

18. The assets that ACM Fatz proposes to acquire via the Fatz APA include certain executory agreements referred to in the Fatz APA as the "Transferred Contracts". I have reviewed the proposed list of the Transferred Contracts that ACM Fatz intends to acquire via the Fatz APA, am familiar with such list and agreements, and will continue to work with Debtors to finalize that list of Transferred Contracts.

19. I understand that the assumption and acquisition of the Transferred Contracts by ACM Fatz will require the Debtors to cure all monetary defaults existing under such Transferred Contracts at the time of the sale closing.

20. In connection with preparing the Fatz APA (and related schedules) myself and other representatives from Atalaya conferred with the Debtors' executives and other business personnel regarding the Debtors' expected cure amounts for the monetary defaults associated with the Transferred Contracts. I understand that in many instances, the Debtors' executives were able to negotiate reductions or modifications in lease terms or cure amounts that were favorable to the Debtors and will improve their operational effectiveness after the Fatz APA sale closing and help to ensure the long-term viability of the Fatz restaurant brand.

21. In addition to the amounts advanced under the DIP Facility, ACM Fatz has obtained a commitment for a post-closing revolving financing commitment from another Atalaya affiliate. That financing commitment would provide additional revolving availability to ACM Fatz after the sale closing and is conditioned upon the closing of the sale contemplated in the Fatz APA. ACM Fatz believes that this additional revolving facility will provide it with sufficient liquidity to operate the business acquired via the Fatz APA.

22. I believe that ACM Fatz will have sufficient funds to satisfy all of the Debtors' cure payments that must be made in respect of the Transferred Contracts on the expected date of the Fatz APA sale closing.

23. Falcon and the Debtors' existing senior management team will continue to assist ACM Fatz after the Fatz APA closing in managing the operations of the restaurants acquired via the Fatz APA. ACM Fatz expects that this assistance from Falcon and the Debtors' existing management team, combined with Atalaya's other restaurant industry knowledge, will help ensure that the acquired restaurants will effectively operate in a manner that will allow them to satisfy their obligations (including assumed cure obligations in respect of Transferred Contracts) as they become due in the ordinary course of business.

#### **Good Faith Nature of Transaction**

24. Atalaya, ACM Fatz, and their management, board of directors, members, officers, directors, employees, agents, and representatives, acted in good faith in connection with the Fatz APA and other transactions related thereto. The Fatz APA and each of the transactions contemplated therein, respectively, were negotiated, proposed, and entered into in good faith, without collusion or fraud, and upon arm's-length bargaining. ACM Fatz has not, to the best of my knowledge, acted in a collusive manner with any entity. The Fatz APA was negotiated with the Debtors and their advisors over a significant time period.

25. ACM Fatz is not an "insider" or an "affiliate" of any of the Debtors, as I understand those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between ACM Fatz and the Debtors.

26. But for the protections afforded to ACM Fatz under the Bankruptcy Code and the Sale Order, ACM Fatz would not have offered the consideration contemplated in the Fatz APA and would be unwilling to consummate the transactions set forth in the Fatz APA. If the sale of

the Acquired Assets (as defined in the Fatz APA) were not free and clear of all liens, claims, encumbrances, and interests, or if ACM Fatz would—or in the future could—be liable for any such liens, claims, encumbrances, and interests, other than any liens, claims, or encumbrances expressly assumed pursuant to the Fatz APA, ACM Fatz would not be willing to consummate the transactions to acquire the Acquired Assets (as defined in the Fatz APA).

27. The total consideration to be provided under the Fatz APA reflects ACM Fatz's reliance on the Sale Order to provide, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, that, upon the Closing (as defined in the Fatz APA), the Debtors have title to, possession of, and the right to transfer the Acquired Assets free and clear of all liens, claims, encumbrances, and interests (other than liens and claims expressly assumed in the Fatz APA).

28. In accordance with section 365 of the Bankruptcy Code, ACM Fatz will provide adequate assurance of future performance to all counterparties under any executory contracts or unexpired leases that are to be assumed and assigned pursuant to the Fatz APA and Sale Order. Accordingly, ACM Fatz has the financial credibility, willingness, and ability to perform its obligations under each of the executory contracts and unexpired leases that may be designated as Transferred Contracts (as defined in the Fatz APA) in accordance with the terms of the Fatz APA.

29. None of the transactions contemplated by the Fatz APA, including, without limitation, the Sale or the assumption and assignment of the Transferred Contracts (as defined in the Fatz APA), is being undertaken for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof.

30. ACM Fatz has been working internally and with its counsel towards consummation of the transactions contemplated by the Fatz APA and expects to continue that work if the transactions are approved by the Bankruptcy Court.

### **United States Trustee's Sale Objection**

31. I have reviewed the United States Trustee's objection to entry of the Sale Order (the "**UST Objection**") and have also reviewed the response to the UST Objection filed by the Official Committee of Unsecured Creditors (the "**Committee Response**").

32. I disagree with the UST Objection and believe that it mischaracterizes the nature of the transaction contemplated in the Fatz APA. Notably, the UST Objection inaccurately suggests that the chance of any recovery for any creditors, other than ACM Fatz, is "slim to none". To the contrary, I believe that, as set forth in the Committee Response, entry of the Sale Order would confer a material benefit on many creditors, other than ACM Fatz. In light of Atalaya and Falcon's deep experience within the restaurant arena, Atalaya recognizes that it would not be able to successfully acquire and operate the Fatz business without making material new investments in the business that will ultimately be likely to flow down to Fatz's creditors and stakeholders.

33. The Fatz APA and Sale Order do not contemplate any cash payment to ACM Fatz (or any affiliate thereof) on the date or the expected sale closing, other than for the reimbursement of professional fees incurred by ACM Fatz in connection with the sale transaction. In fact, Atalaya anticipates that it could potentially take years for Atalaya to realize any material distribution in

respect of its investment in the Fatz restaurants. Instead, ACM Fatz and Atalaya intend to invest significant new funds into the Fatz restaurants as part of the sale closing in order to pay back rent to many of the Debtors' landlords, pay administrative claims incurred by the Debtors, provide a viable counterparty and trading partner for the Debtors' landlords and existing suppliers, save existing jobs, ensure sufficient liquidity for employee compensation, and preserve a longstanding brand in various communities within the Southeast.

34. The UST Objection also took issue with (a) the incorporation of certain provisions within the Fatz APA addressing bonuses that would be payable to certain of the Debtors' current executives; and (b) the incorporation of certain redactions within the form of Fatz APA filed with the Court. Such provisions addressing executive bonuses have been removed from the Fatz APA, and I believe that the UST's objections to such provisions are now moot in light of their removal from the Fatz APA. I also understand that the Debtors have filed an updated version of the Fatz APA that eliminates most redactions, other than redactions for sensitive employee information, thereby resolving the UST's redaction concerns.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: February 11, 2019

By: /s/ Everett Indart  
Name: Everett Indart  
Title: Senior Asset Manager  
Atalaya Capital Management LP