

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

In re:

CAFÉ HOLDINGS CORP., *et al.*

Debtors.

Case No. 18-05837-hb
Chapter 11

RESPONSE OF UNITED STATES TRUSTEE TO FINAL FEE APPLICATIONS

The United States Trustee (the “UST”), by and through his counsel, hereby files this response to the Final Fee Applications filed in these cases (ECF Docs. 522, 523, 524, 525, 526, 527 and 532). The UST files this response pursuant to the authority granted to him by 28 U.S.C. § 586 and 11 U.S.C. § 307.¹ In support of the Response, the UST respectfully states:

1. On November 15, 2018 (the “Petition Date”), the Debtors each filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 cases are being jointly administered for procedural purposes.

2. On November 28, 2018, the Office of the UST appointed a committee of general unsecured creditors (the “Committee”).

3. On January 15, 2019, the Debtors filed a motion seeking an order approving a global settlement between the Debtors, the Committee, and Atalaya (the “Global Settlement”). *See* ECF Doc. 357.

¹ Further reference to Title 11 U.S.C. § 101, *et. seq.* will be by section number only.

4. On January 15, 2019, the Debtors also filed a Motion seeking to dismiss the Debtors Chapter 11 Cases (the “Motion to Dismiss”). *See* ECF Doc. 359. The Motion to Dismiss sought dismissal upon certification to the Court that, among other things “all U.S. Trustee fees attributable to the Debtors have been paid in full.” *Id.* at ¶ 14. The hearing on the Motion to Dismiss has been continued to May 21, 2019.

5. On February 14, 2019, the Court entered an order approving the Global Settlement (the “Global Settlement Order”). *See* ECF Doc. 439. The Global Settlement Order provides that “[t]his Order and the Term Sheet shall be binding upon the Debtors, the DIP Secured Parties, and the Committee.” *See id.* at ¶ 7. Among other things, the Term Sheet provides:

U.S. Trustee Fees and Court. The DIP Secured Parties shall provide sufficient DIP Advances to 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.

Id., Term Sheet at pp. 2-3.

6. The Debtors are not current with filing their monthly operating reports. To date, they have filed monthly operating reports for November 2018, December 2018, and January 2019. *See* ECF Docs. 300, 378, and 507. The monthly operating reports for February and March 2019 are past due.

7. The UST’s quarterly fees for the first quarter of 2019 were due at the end of April 2019. Because the Debtors are behind on the filing of their monthly operating reports, it is not possible to know with certainty what the UST quarterly fees will be, but the UST’s system estimates those payments to amount to as follows:

Debtor	Amount
Café Holdings Corp.	\$204,379.00
Café Enterprises, Inc.	\$325
CE Sportz LLC	\$325
CES Gastonia LLC	\$325

8. The UST does not have an objection to the allowance of the amount of fees sought in the Final Fee Application *per se*. The UST, however, has an objection to payment of such fees to any professional until the Debtors have filed all their outstanding monthly operating reports and the UST fees due are paid. Professional fees have the same priority as “fees and charges assessed against the estate under chapter 123 of title 28” – including UST fees governed by 28 U.S.C. § 1930. *See* 11 U.S.C. §§ 503 and 507.

WHEREFORE, the UST respectfully requests that this Court not grant the Debtors’ authority to pay professionals amounts allowed under their Final Fee Applications until such time as the Debtors become current on their monthly operating reports and any amount that is owed in UST quarterly fees is paid in full.

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Date: 5/7/2019

CERTIFICATE OF SERVICE

I, Elisabetta G. Gasparini, do hereby certify that on May 7, 2019, I served the below-named documents upon the parties listed below by electronic mail.

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