

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
RUI HOLDING CORP., <i>et al.</i> , ¹)	Case No. 19-11509 (____)
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF DAVID BAGLEY IN SUPPORT
OF DEBTORS’ FIRST DAY MOTIONS AND APPLICATIONS**

David Bagley declares as follows:

1. I am the Chief Restructuring Officer of RUI Holding Corp. (“ Holding ”), RU Corp., Restaurants Unlimited, Inc. and Restaurants Unlimited Texas, Inc., the debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “ Debtor ”, and collectively, the “ Debtors ” or, the “ Company ”). On the date hereof (the “ Petition Date ”), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “ Bankruptcy Code ”). I am familiar with the day-to-day operations, businesses, and financial affairs of the Debtors.

2. I submit this declaration (the “ First Day Declaration ”) to provide the Court and other parties in interest with an overview of the Debtors’ businesses and to describe the circumstances compelling the commencement of these chapter 11 cases. I also submit this First

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: RUI Holding Corp. (6192); RU Corp. (8259); Restaurants Unlimited, Inc. (8365); and Restaurants Unlimited Texas, Inc. (5733). The Debtors’ headquarters and mailing address is: 411 First Ave. South, Suite 200, Seattle, WA 98104. The Debtors operate restaurants under the following names: Clunkerdagger; Cutters Crabhouse; Fondi Pizzeria; Henry’s Tavern; Horatio’s; Kincaid’s; Maggie Bluffs; Manzana; Newport Seafood Grill; Palisade; Palomino; Portland City Grill; Portland Seafood Company; Scott’s Bar & Grill; Simon & Seafort’s; Skate’s on the Bay; Stanford’s; and Stanley & Seafort’s.

Day Declaration in support of the first day motions² and applications filed by the Debtors contemporaneously herewith, or as soon as reasonably practicable hereafter, by which the Debtors seek relief enabling the Debtors to continue as going concerns, operate effectively, minimize certain of the potential adverse effects of the commencement of their chapter 11 cases, and preserve and maximize the value of the Debtors' estates. I submit this First Day Declaration based on my own personal knowledge, except as expressly provided, and as my testimony, if called to testify.

BACKGROUND

A. The Company's Businesses

3. Founded in 1968, the Company opened its first restaurant in 1969 and has been a premier multi-branded restaurant operator for almost 50 years, with locations primarily along the West coast and specific concentration in the Pacific Northwest. The Company's restaurants are situated in iconic, scenic, high-traffic locations. The Debtors currently own and operate 35 restaurants that offer both fine dining at various upscale locations and polished casual dining restaurants in 6 states³, under the following trade names: Clinkerdagger; Cutters Crabhouse; Fondi Pizzeria; Henry's Tavern; Horatio's; Kincaid's; Maggie Bluffs; Manzana; Newport Seafood Grill; Palisade; Palomino; Portland City Grill; Portland Seafood Company; Scott's Bar & Grill; Simon & Seafort's; Skate's on the Bay; Stanford's; and Stanley & Seafort's.

4. The Company's restaurants offer freshly prepared made-from-scratch food and cocktails using original recipes, signature sauces and dressings, with attentive service, and an upscale and contemporary ambience. The restaurants' iconic and scenic location and

² All references to agreements, pleadings, or other documentation or summaries thereof in this First Day Declaration are qualified in their entirety by the terms set forth in the relevant agreements, pleadings, or other documents.

³ The Debtors current operating restaurant locations are in the following states: Washington (13), Oregon (12), California (6), Minnesota (2), Colorado (1), and Alaska (1).

disassociation from a national branded concept augments each store's "local" feel and delivers to its guests truly unique yet affordable dining experiences.

5. The Debtors' competitive strengths include (a) innovative menu selections with local flair and appeal; (b) multiple dining concepts with a variety of atmospheres and price points; (c) significant bar business; (d) personalized customer service to make every guest experience exceptional and; (e) locations in scenic, high-activity areas to attract customers throughout the day beyond traditional meal times.

6. Currently, the Company is focused on key initiatives designed to drive traffic, increase sales, and enhance the customer experience, including its customer rewards programs, significant gift card sales through its locations and Costco, email, text and app-based promotions and customer outreach programs. The Company also consistently reviews pricing, menu items, and specials to enhance and provide value and variety for its customers. Currently, the Company is focusing on increased volume of private events, special dining promotions (chef dinners, etc.), and summer time specials and events at its locations.

7. Despite the Company's efforts, the Company's revenue for the twelve months ended May 31, 2019, was \$176 million, down 1% from the prior year. As of the Petition Date, the Company has approximately \$150,000 of cash on hand and lacks access to needed liquidity other than cash flow from operations.

8. The Debtors employ approximately 1,885 part time hourly employees, approximately 168 full time restaurant salaried employees, and 50 salaried employees at the corporate headquarters in Seattle, Washington. None of the Debtors' employees are covered by a collective bargaining agreement.

B. Corporate and Capital Structure of the Company

9. Holding owns 100% of the common stock of Debtor RU Corp. which, in turn, wholly owns Debtor Restaurants Unlimited Inc. which, in turn wholly owns Debtor Restaurants Unlimited Texas Inc. A Corporate Entity Organizational Chart is attached hereto as Exhibit A.

10. Debtors RU Corp., Restaurants Unlimited Inc., and Restaurants Unlimited Texas Inc., as borrowers (“Borrowers”), are parties to a Third Amended and Restated Credit Agreement, dated as of July 31, 2013 (as amended, restated, amended and restated, waived, supplemented, or otherwise modified from time to time, the “Prepetition Credit Agreement,” and together with the other Loan Documents (as defined in the Prepetition Credit Agreement), the “Prepetition Loan Documents”), with Fortress Credit Co LLC, as agent (the “Prepetition Agent”), and the lenders party thereto from time to time (the “Prepetition Lenders” and collectively with the Prepetition Agent and any other holders of Prepetition Secured Obligations (as defined below), the “Prepetition Secured Parties”). The Borrowers’ obligations under the Prepetition Credit Agreement are guaranteed by Holding pursuant to a Second Amended and Restated Guaranty, dated as of July 31, 2013 (as amended, restated, amended and restated, waived, supplemented, or otherwise modified from time to time, the “Guaranty”). The Debtors’ obligations under the Prepetition Credit Agreement and the Guaranty are secured by a pledge of substantially all of their assets pursuant to a Second Amended and Restated Security Agreement, dated as of July 31, 2013.

11. Prior to the Petition Date, the Debtors were in default under the Prepetition Credit Agreement which led to a series of Forbearance Agreements beginning in 2018 (each, a “Forbearance Agreement” and collectively, the “Forbearance Agreements”), the latest of which was dated as of March 1, 2019. Pursuant to the Forbearance Agreements, the Prepetition Agent

and Prepetition Lenders agreed to, among other things, forbear from exercising certain rights and remedies under the Prepetition Credit Agreement for a limited period of time, subject to certain terms and conditions.

12. Notwithstanding the existing defaults, on May 2, 2018, the Prepetition Agent and Prepetition Lenders agreed to make an additional revolving loan to the Debtors in the amount of \$500,000 (the "Additional Loan").

13. In July 2018, the forbearance period set forth under the applicable Forbearance Agreement terminated in accordance with the terms of the Forbearance Agreement. As of July 31, 2018, there was no other financing available to the Debtors and the Debtors have operated solely based on their cash flow from operations through the Petition Date.

14. As of the Petition Date, the Debtors are unconditionally jointly and severally indebted to the Prepetition Secured Parties pursuant to the Prepetition Loan Documents, without objection, defense, counterclaim, or offset of any kind, in respect of loans in the aggregate outstanding principal amount of approximately \$37,741,726.63 *plus* accrued and unpaid interest with respect thereto of \$1,703,030.79 as of June 30, 2019, and any additional fees, costs, expenses (including any attorneys', financial advisors', and other professionals' fees and expenses), premiums (if any), reimbursement obligations, indemnification obligations, contingent obligations, and all other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Credit Agreement) owing under or in connection with the Prepetition Loan Documents.

15. As of the Petition Date, the Company owes various vendors, suppliers, and other unsecured trade creditors approximately \$7.6 million.

C. Events Leading to the Commencement of the Chapter 11 Cases

16. Over the past several years, certain changes to wage laws in the Debtors' primary geographic locations coupled with two expansion decisions that utilized cash flow from operations resulted in increased use of cash flow from operations and borrowings and restricted liquidity. These challenges coupled with additional state-mandates that will result in an additional extraordinary wage hike in FYE 2020 in certain locations before all further wage increases are subject to increases in the CPI and the general national trend away from casual dining, led to the need to commence these chapter 11 cases.

17. Over the past three years, the Company's profitability has been significantly impacted by progressive wage laws along the Pacific coast that have increased the minimum wage as follows: Seattle \$9.47 to \$16.00 (69%), San Francisco \$11.05 to \$15.59 (41%), Portland \$9.25 to \$12.50 (35%). As a large employer in the Seattle metro market, for instance, the Company was one of the first in the market to be forced to institute wage hikes. Currently in Seattle, smaller employers enjoy a statutory advantage of a lesser minimum wage of \$1 or more through 2021, which is not available to the Company. The result of these cumulative increases was to increase the Company's annual wage expenses by an aggregate of \$10.6 million through fiscal year end 2019.

18. In the second half of 2017, the Debtors opened two new restaurants, one in Bellevue, WA and the second in Seattle, WA. This expansion required a significant amount of capital, exceeding \$10 million. Since opening, the anticipated foot traffic and projected sales at these locations did not materialize and, exacerbated by the increase in employee costs, the Company experienced significant operating losses at these locations.

19. Starting in the Fall of 2016, the Debtors hired an investment banker to market and explore options to sell the company. During that process, over 170 parties were contacted. There were eight (8) expressions of interest. However, no party ever progressed past due diligence to documentation and no sale transaction was ever finalized

20. In the Fall of 2017, the Debtors executed a Letter of Intent and proceeded with a five-week exclusive diligence and negotiation period with a potential buyer. Ultimately the exclusivity period expired, and no deal was reached. Beginning in the Spring of 2018 the Debtors attempted to recapitalize its existing debt through a refinancing process undertaken with the assistance of an investment bank. There were two (2) term sheets received that were ultimately deemed not adequate to refinance the existing funded indebtedness. In the Fall of 2018, the Debtors executed another Letter of Intent and proceeded with an exclusive diligence and negotiation period with a potential buyer. Ultimately, in March of 2019, the exclusivity period expired and no deal was reached.

21. Notwithstanding the Debtors' almost constant efforts and management attention devoted to several processes over the last three years to seek to locate either a party to provide an equity infusion to offset amounts owed to the Prepetition Lenders or to locate a purchaser for some or all of the assets of the Debtors, the Debtors were unable to consummate a transaction.

22. The Forbearance Agreements executed by the Company placed further restrictions on the Company's borrowing ability, increased the effective interests rates being charged to the Company and tightened certain financial covenants, effectively limiting the Company's available liquidity.

23. In March 2019, the Company engaged Carl Marks Advisory Group LLC ("Carl Marks") to assist the Company in liquidity analysis and in the evaluation of strategic alternatives.

24. By May 2019, liquidity was severely impacted by the above changes to the lending agreements along with declining trends and continuing increased costs. To address these issues, the Debtors engaged Configure Partners, LLC (“Configure”) as their proposed investment banker to locate investors and continue to market their assets for sale, assist in the evaluation of strategic alternatives, including the sale of the Company, refinancing, or other alternatives, such as the closure of additional restaurants. Shortly thereafter, the Debtors also engaged David Bagley of Carl Marks to serve as Chief Restructuring Officer effective June 17, 2019.

25. Indeed, at the time of the commencement of these cases, the Debtors have under \$150,000 of cash on hand—an amount insufficient to operate the Debtors’ businesses or continue in the ordinary course. The Debtors have not paid any interest or debt service to the holders of their funded debt since January, 2019, the amounts owed under the Prepetition Credit Agreement are immediately due and payable, certain of their rent obligations are past due, and they are behind on certain vendor payments.

26. Immediately preceding the filing of these chapter 11 cases, and after unsuccessful negotiations with certain landlords concerning rent concessions, the Company closed six (6) of its unprofitable restaurants, specifically the following: Palomino in Indianapolis, Indiana, and Bellevue, Washington; Prime Rib & Chocolate Cake in Portland, OR; Henry’s Tavern in Plano, Texas; Stanford’s in Walnut Creek, California; and Portland Seafood Co. in Tigard, Oregon. Considering all the events previously detailed, increasing wage costs, lease termination and exit costs for closed restaurants, and limited liquidity to pursue strategic alternatives outside of the bankruptcy process, the Company decided to seek protection under chapter 11 of the Bankruptcy Code and commenced these chapter 11 cases.

D. Goals of the Chapter 11 Cases

27. The Company commenced these chapter 11 cases to preserve value for its stakeholders, including its employees and creditors. Additionally, the Debtors have negotiated a debtor-in-possession financing facility that will allow the Debtors to continue to operate in the normal course, pay landlords and vendors, and have sufficient liquidity to pay the administrative costs, both operational and statutory, required in these chapter 11 cases.

28. After its engagement, Configure prepared a marketing teaser and confidential information memorandum that it used to market the sale of the Debtors' assets. As of the Petition Date, Configure and/or the Debtors contacted approximately 69 potential strategic buyers and 213 financial buyers, out of which 45 executed confidentiality agreements and received the confidential information memorandum and access to key documents in an online data room. To date, Debtors have received initial indications interest from multiple strategic and financial buyers.

29. Contemporaneously with the filing of these chapter 11 cases, the Debtors filed their combined sale procedures and sale motion with the Court to establish a formal sale timeline, which will include an auction process with a goal of entering into an asset purchase agreement with a stalking horse buyer prior to a hearing to approve sale procedures, which will be subject to higher and better offers in the event the Debtors receive competing bids.

30. After the Petition Date, the Debtors and Configure will continue discussions with interested parties and market the Debtors' assets with a goal of entering into an asset purchase agreement with a stalking horse buyer.

31. The Debtors believe that a marketing and sale process through these chapter 11 cases is in the best interests of the Company's creditors and will maximize the value of these estates

Evidentiary Support for First Day Motions

32. Contemporaneously, the Debtors have filed a number of first day pleadings seeking relief that the Debtors believe is necessary to enable them to efficiently administer their estates with minimal disruption and loss of value during these chapter 11 cases. The Debtors request that the relief sought in each of the first day motions be granted as critical elements in ensuring the maximization of value of the Debtors' estates. I believe that the relief requested in the first day motions is necessary to allow the Debtors to operate with minimal disruption during the pendency of these chapter 11 cases. I have reviewed each of the first day motions discussed below and the facts set forth in each first day motion are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors. A description of the relief requested in and the facts supporting each of the first day motions is set forth in Exhibit B attached hereto and incorporated herein by reference.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct.

Dated: July 7, 2019
Wilmington, Delaware

/s/ David Bagley

Name: David Bagley
Title: Chief Restructuring Officer

EXHIBIT A

Organizational Chart

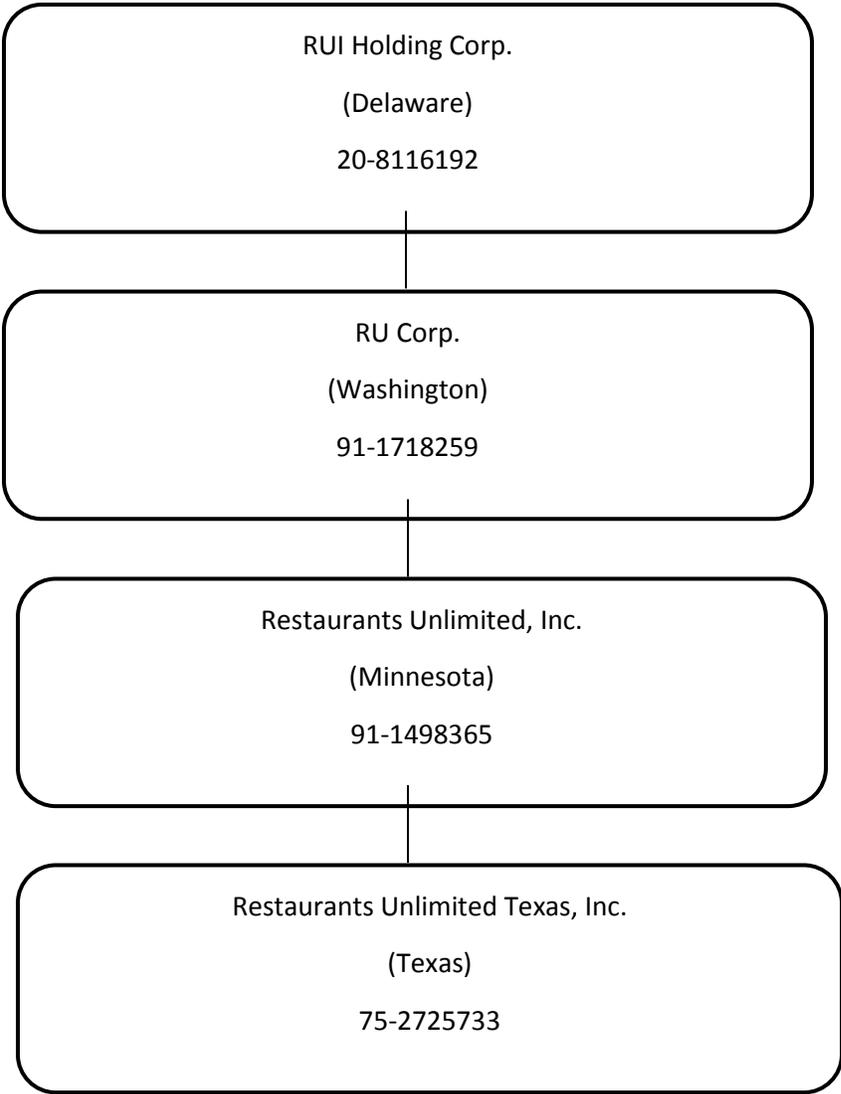


EXHIBIT B

Evidentiary Support for First Day Motions¹

I. Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Their Related Chapter 11 Cases and (II) Granting Related Relief (the "Joint Administration Motion").

1. Pursuant to the Joint Administration Motion, the Debtors request entry of an order directing the joint administration of their related chapter 11 cases and granting any related relief. Given the integrated nature of the Debtors' operations, joint administration of these chapter 11 cases will provide significant administrative convenience and cost savings to the Debtors without harming the substantive rights of any party in interest.

2. Many of the motions, hearings, and orders in these chapter 11 cases will affect each Debtor entity. For example, virtually all of the relief sought by the Debtors in the First Day Motions is sought on behalf of all of the Debtors. The entry of an order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration of these chapter 11 cases, for procedural purposes only, under a single docket, will also ease the administrative burdens on the Court by allowing the Debtors' cases to be administered as a single joint proceeding, instead of multiple independent chapter 11 cases. Accordingly, I respectfully submit that the Joint Administration Motion should be approved.

¹ Capitalized terms not defined hereafter shall have the same meanings ascribed to such terms in the respective First Day Motion.

II. Debtors' Motion For Entry of an Order (I) Authorizing the Debtors to File A Consolidated List of Creditors in Lieu of Submitting A Separate Mailing Matrix for Each Debtor, and (II) Granting Related Relief (the "Creditor Matrix Motion").

3. Pursuant to the Creditor Matrix Motion, the Debtors seek entry of an order authorizing the Debtors to maintain a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor and granting related relief.

4. Although I understand that a list of creditors is usually filed on a debtor-by-debtor basis, in a complex chapter 11 bankruptcy case involving more than one debtor, the debtors may file a consolidated creditor matrix "in the interest of justice." Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be an unnecessarily burdensome task and result in duplicate mailings. Accordingly, I respectfully submit that the Court should approve the Creditor Matrix Motion.

III. Debtors' Application For Entry of an Order, Pursuant to 28 U.S.C. § 156(c), Authorizing the Retention and Appointment of Epiq Corporate Restructuring, LLC as Claims and Noticing Agent for the Debtors *Nunc Pro Tunc* to the Petition Date (the "Claims and Noticing Agent Retention Application").

5. Pursuant to the Claims and Noticing Agent Retention Application, the Debtors seek entry of an order appointing Epiq Corporate Restructuring, LLC ("Epiq") as claims and noticing agent for the Debtors and their chapter 11 cases, effective *nunc pro tunc* to the Petition Date, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' chapter 11 cases and granting related relief.

6. Based on my discussions with the Debtors' advisors, I believe that the Debtors' selection of Epiq to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interest of the estates. Moreover, it is my understanding that based on all

engagement proposals obtained and reviewed that Epiq's rates are competitive and comparable to the rates charged by their competitors for similar services.

7. The Debtors anticipate that there will be thousands of parties and entities to be noticed in these chapter 11 cases. In light of the number of parties in interest and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent will provide the most effective and efficient means of, and relieve the Debtors and/or the Clerk's office of the administrative burden of, noticing and processing proofs of claim and is in the best interests of both the Debtors' estates and their creditors. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Claims and Noticing Agent Retention Application.

IV. Debtors' Motion for Entry of an Interim and Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (II) Granting Related Relief (the "Cash Management Motion").

8. Pursuant to the Cash Management Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to (i) continue to operate their Cash Management System; (ii) honor certain prepetition obligations related thereto; and (iii) maintain existing Business Forms in the ordinary course of business and granting any related relief.

9. The Debtors' Cash Management System is similar to the centralized cash management systems used by other comparably sized companies to manage cash flow. The Debtors use their Cash Management System in the ordinary course to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting. The Debtors' treasury department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds. Additionally, the Debtors' corporate

accounting, treasury, and internal audit departments regularly reconcile the Debtors' books and records to ensure that all transfers are accounted for properly.

10. Because of the disruption that would result if the Debtors were forced to close their existing bank accounts, I believe that it is critical that the existing Cash Management System remain in place. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

V. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the "Wages Motion").

11. Pursuant to the Wages Motion, the Debtors seek entry of interim and final orders authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation and reimbursable employee expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto. The Debtors seek authority to make the following payments related to prepetition amounts owed on account of the Employee Compensation and Benefits:

Employee Obligation	Interim Amount	Final Amount
Employee Compensation	\$3,700,000	\$3,700,000
Withholding Obligations	\$1,400,000	\$1,400,000
Payroll Processing Fees	\$15,000	\$34,000
Reimbursable Expenses	\$50,000	\$50,000
Employee Benefits Programs	\$700,000	\$1,820,000
Total	\$5,865,000	\$7,004,000

12. The Debtors employ approximately 1,885 part time hourly employees, approximately 168 full time restaurant salaried employees, and 50 salaried employees at the corporate headquarters (collectively, the “Employees”). The Employees perform a variety of functions critical to the preservation of value and the administration of the Debtors’ estates. In many instances, the Employees include personnel who are intimately familiar with the Debtors’ businesses, processes, and systems, and who cannot be easily replaced.

13. The majority of Employees rely on the Employee Compensation and Benefits to pay their daily living expenses. Thus, Employees will face significant financial consequences if the Debtors are not permitted to continue the Employee Compensation and Benefits in the ordinary course of business. The Debtors seek to minimize the personal hardship the Employees would suffer if employee obligations are not paid when due or as expected. Consequently, I believe the relief requested is necessary and appropriate.

14. The Debtors are seeking authority to pay and honor certain prepetition claims relating to the Employee Compensation and Benefits, including, among other things, wages, salaries, and other compensation, payroll services, federal and state withholding taxes and other amounts withheld, reimbursable expenses, health insurance, life insurance, workers’ compensation benefits, short- and long-term disability coverage, auxiliary benefits, retirement plans, paid time off, severance, and other benefits that the Debtors have historically directly or indirectly provided to the Employees in the ordinary course of business and as further described in the Wages Motion.

15. I believe the Employees provide the Debtors with services necessary to conduct the Debtors’ businesses, and absent the payment of the Employee Compensation Benefits owed to the Employees, the Debtors will likely experience Employee turnover and instability at this critical

time. I believe that without these payments, the Employees may become demoralized and unproductive because of the potentially significant financial strain and other hardships the Employees may face. Employees may then elect to seek alternative employment opportunities. I believe enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. I, therefore, believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their business in these chapter 11 cases.

16. Therefore, I believe that the relief requested in the Wages Motion inures to the benefit of all parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Wages Motion.

VI. Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the "Customer Programs Motion").

17. The Debtors have historically provided gift cards, coupons, discounts, and other accommodations to their customers to attract and maintain positive customer relationships. The Customer Programs promote customer satisfaction and inure to the goodwill of the Debtors' businesses and the value of their brand. Accordingly, maintaining the goodwill of their customers is critical to the Debtors' ongoing operations in these chapter 11 cases, and is necessary to maximize value for the benefit of all of the Debtors' stakeholders.

18. Importantly, I understand that the Debtors estimate that substantially all of their prepetition obligations under the Customer Programs, including those for pre-paid gift cards, rewards, discounts, or other similar obligations owing to their customers *do not* entail the expenditure of cash.

19. The Debtors seek authorization in their sole discretion to honor all gift cards purchased by or issued to customers prior to the Petition Date and maintain the Gift Cards Program postpetition. The Debtors also seek to continue their Rewards Program whereby participating customers earn points for each meal, beverage and/or gift card purchased from the Debtors. Neither the Gift Card nor the Rewards Program require a cash outlay by the Debtors.

20. I believe that continuing to administer the Customer Programs without interruption during the pendency of the chapter 11 cases will help preserve the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' creditors and benefit their estates. In contrast, if the Debtors are unable to continue the Customer Programs postpetition or honor their existing obligations thereunder, the Debtors risk alienating certain customers (who might then decide to patron the Debtors' competitors) and might suffer corresponding losses in customer loyalty and goodwill that will harm their prospects for maximizing the value of their estates. The Debtors' Customer Programs are essential marketing strategies for attracting new customers.

21. I believe that the failure to honor the Customer Programs could place the Debtors at a competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from the chapter 11 filings. Such uncertainty could erode the Debtors' hard-earned reputation, which, in turn, could adversely impact the prospects for a successful sale process in these chapter 11 cases.

22. I believe that the relief requested herein will benefit the Debtors' estates and the sale process, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of the chapter 11 cases. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Customer Programs Motion.

VII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Trade Claimants, PACA/PASA Claimants, and Other Vendors; (II) Approving the Procedures Related Thereto; and (III) Granting Related Relief (the "Comprehensive Vendor Motion").

23. Pursuant to the Comprehensive Vendor Motion, the Debtors seek entry of interim and final orders: (i) authorizing the Debtors to pay, in their sole discretion, prepetition claims held by (a) Critical Vendors; (b) Logistics Claimants; (c) PACA/PASA Claimants' and (d) section 503(b)(9) Claimants in an aggregate amount not to exceed \$500,000, pursuant to the Interim Order and, inclusive of amounts paid pursuant to the Interim Order, an aggregate amount not to exceed \$3.5 million, pursuant to the Final Order, in each case absent further order of the Court; and (ii) granting related relief.

24. The Debtors interact with numerous different vendors and the Debtors have undergone a stringent analysis, in consultation with their advisors, to determine which vendors fall into these categories of Claimants and the extent to which each vendor is critical to the ongoing operations of the Debtors' businesses. A number of these vendors possess claims that are entitled to certain priorities under Bankruptcy Code section 503(b)(9) or under PACA or PASA (as defined in the Comprehensive Vendor Motion). A number of these creditors may be entitled to possessory liens or a statutory trust for goods in transit to the Debtors. Additionally, a number of these vendors may be vendors that are essential to the Debtors' operations and cannot be replaced. The Debtors have long-standing, familiar relationships with a number of their top vendors that have specific delivery schedules, quality and portion sizing, and special products with exacting specifications that have been developed over a long period of time. Replacing these vendors would be extremely time consuming and could cause significant operational disruptions at a time the Debtors can least afford to experience them. Furthermore, due to the nature of the Debtors' restaurant business that requires frequent deliveries and quick turnover of

goods sold, a very significant number of the creditors affected by this Comprehensive Vendor Motion will fall into more than one of the categories described in the Motion.

25. The Debtors proposed to undertake a reconciliation of such claims, and in their discretion and in accordance with their business judgement, determine which of these claims should be currently satisfied and whether or not the payment of such claims should be contingent on the extension of favorable business terms.

26. Recognizing that payment of prepetition claims of certain vendors is extraordinary relief, the Debtors, with the assistance of myself and the Debtors' advisors, reviewed their books and records, consulted operations management and purchasing personnel, reviewed contracts and supply agreements, and analyzed applicable laws, regulations, and historical practices to identify the limited number of vendors that are critical to the continued and uninterrupted operation of the Debtors' businesses—the loss of which could materially harm their businesses, shrink their market share, reduce their enterprise value, and impair going-concern viability.

27. The Debtors submit that the requested relief will allow the Debtors to continue to operate and preserve the value of their estates by paying certain prepetition claims of certain vendors that are critical to the Debtors' business enterprise. Accordingly, the Debtors seek authority, but not direction, to pay prepetition claims of certain Critical Vendors, Logistics Claimants, PACA/PASA Claimants and Section 503(b)(9) Claimants, on a case-by-case basis, a total of approximately \$3.5 million in the aggregate, with an amount up to \$500,000 due and payable on an interim basis and up to an additional \$3 million due and payable on a final basis.

28. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Comprehensive Vendor Motion.

VIII. Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (VI) Granting Related Relief (the "Utilities Motion").

29. In connection with the operation of their businesses and management of their properties, the Debtors obtain water, sewer service, electricity, waste disposal, natural gas, and other similar services either directly from utility companies or their brokers or indirectly from landlords that pay for and pass through the costs associated therewith to the Debtors in accordance with the applicable nonresidential real property lease. The relief requested herein applies to all Utility Providers.

30. The Debtors pay approximately \$426,000 per month on average over the prior twelve-month period for utilities. Accordingly, with the closure of certain locations, the Debtors estimate that their cost for Utility Services during the next 30 days will be approximately \$367,000. The Debtors propose depositing \$213,000 into a segregated account as additional assurance of payment, which is an amount sufficient to cover one-half of the Debtors' average monthly cost based on the historical average payment.

31. Additionally, the Debtors seek approval of their proposed Adequate Assurance Procedures. These procedures allow Utility Providers to request adequate assurance for unpaid Utility Services and additional adequate assurance when they believe the proposed amount is not sufficient. This ensures that all key stakeholder groups obtain notice of such request before it is honored.

32. Any disruption in the Debtors' businesses would adversely impact customer relationships and result in a significant decline in the Debtors' revenues and profits. This, in turn, jeopardizes the value of the Debtors' estates and impacts creditor recoveries. Therefore, it is critical that Utility Services continue uninterrupted during these chapter 11 cases.

Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Utilities Motion.

IX. Debtors' Motion for Entry of an Interim and Final Order (I) Authorizing, But Not Directing the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief (the "Taxes Motion").

33. The Debtors request entry of interim and final orders authorizing, but not directing, the Debtors, in their sole discretion, to negotiate, remit and pay certain accrued and outstanding prepetition obligations accrued in the ordinary course of business on account of the Taxes and Fees in an aggregate amount not to exceed \$1.3 million on an interim basis and \$1.55 million on a final basis, absent further order of the Court; and to continue negotiating and paying the Taxes and Fees accrued in the ordinary course of business on a postpetition basis.

34. The Debtors collect, incur, and pay sales and use taxes, franchise taxes and various other governmental taxes, fees, and assessments. The Debtors remit the Taxes and Fees to various federal, state, and local governments, including taxing authorities. Taxes and Fees are remitted and paid by the Debtors through checks and electronic transfers that are processed through their banks and other financial institutions. The Debtors estimate that approximately \$1,550,00 million in Taxes and Fees relating to the prepetition period are or will become due and owing to the Governmental Authorities after the Petition Date in the ordinary course.² The Debtors further estimate that approximately \$1.3 million in Taxes and Fees relating to the prepetition period are or will become due and owing to the Governmental Authorities within 30 days after the Petition Date.

35. The Debtors must continue to pay the Taxes and Fees to avoid potential costly distractions during these chapter 11 cases. Specifically, the Debtors' failure to pay the Taxes

² This estimate does not include any potential prepetition tax liability that may later come due as the result of an audit.

and Fees could adversely affect the Debtors' estate because the Governmental Authorities could file liens or seek to lift the automatic stay.

36. I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Taxes Motion should be approved.

X. Debtors' Motion for Entry of an Interim and Final Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (D) Honor the Terms of the Financing Agreements and Pay Premiums Thereunder, and (II) Granting Related Relief (the "Insurance Motion").

37. The Debtors request authority authorizing but not directing them to pay obligations under insurance policies entered into prepetition and to renew, supplement, modify, or purchase insurance coverage in the ordinary course and honor the terms of certain financing agreements. In addition, the Debtors request that the Court schedule a final hearing within approximately 30 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

38. The Debtors maintain approximately twenty-five (25) insurance policies administered by multiple third-party insurance carriers. The Insurance Policies provide coverage for, among other things, the Debtors' directors and officers liability, crime, marine cargo, casualty, international, and network/cyber liability. The Debtors' Insurance Policies are essential to the preservation of the value of the Debtors' business, properties, and assets. I understand that, in many cases, insurance coverage such as that provided by the Insurance Policies is required by diverse regulations, laws, and contracts.

39. For the twelve months preceding the Petition Date, the Debtors paid approximately \$1,200,000 in the aggregate on account of premiums under the existing Insurance Policies. The Debtors generally pay premiums with respect to the Insurance Policies, as a combination of down payment and monthly payment, to the Debtors' insurance brokers.

40. Some, but not all, of the Insurance Policies are financed through premium Financing Agreements with the AFCO Premium Credit LLC, First Insurance, and IPFS Corporation. Pursuant to the Financing Agreements, the Debtors are required to make monthly premium payments for the various policies. As of the Petition Date, there is approximately \$200,000 outstanding on account of the Financing Agreements, some or all of which will come due during the pendency of these chapter 11 cases. The Debtors seek the authority to honor any prepetition amounts outstanding on account of the Insurance Policies, including under the terms of the Financing Agreements, and pay premiums thereunder.

41. Failure to make the payments required by the Debtors' Insurance Policies, including the Financing Agreements, could have a significant negative impact on the Debtors' operations. Continuation of the Insurance Policies is essential to the preservation of the value of the Debtors' properties and assets. Moreover, in many cases, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts governing the Debtors' commercial activities, including the requirements of the Office of the United States Trustee for the District of Delaware.

42. I believe that the relief requested in the Insurance Motion is in the best interest of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be approved.

XI. Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition 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 the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "DIP Motion").

43. The Debtors have an immediate postpetition need to use incremental liquidity in the form of postpetition financing as well as access to Cash Collateral. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash to, among other things, continue operating their businesses and satisfy other working capital needs during these chapter 11 cases. The Debtors believe that all or substantially all of their available cash constitutes the cash collateral, as that term is used by section 363(c) of the Bankruptcy Code, of the Prepetition Secured Parties. The Debtors will therefore be unable to proceed with operating their businesses without the ability to use Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to finance their business operations, and the availability of sufficient working capital and liquidity to the Debtors through the use of Cash Collateral, is vital to the preservation and maintenance of the value of the Debtors' estates and the successful prosecution of these chapter 11 cases.

44. Further support for the DIP Motion can be found in my Declaration in Support of the DIP Motion. The DIP Motion seeks authority for the Debtors to obtain a senior secured, super-priority, multi-draw term loan of up to \$10,000,000 (the "DIP Facility" and the loans made thereunder, the "DIP Loans") on the terms and conditions set forth in the DIP Orders and the Senior Secured Super-Priority Debtor-in-Possession Credit Agreement (the "DIP Agreement") to be executed among the Borrowers, Fortress Credit Co LLC, as agent (in such capacity, the "DIP

Agent”), and for and on behalf of the lenders party thereto from time to time (collectively, the “DIP Lenders”).

45. The Debtors seek further authorization to use the proceeds of the DIP Facility as expressly provided in the DIP Documents and consistent with the Budget to pay costs, fees, and expenses of the DIP Agent and DIP Lenders and related attorneys’ fees; to provide working capital for other general corporate purposes of the Debtors; and to pay administration costs, fees and expenses of these Cases and claims or amounts approved by the Bankruptcy Court. As set forth in the DIP Motion, the Debtors also seek authorization to execute and deliver the DIP Agreement and related documents and to perform such other and further acts as may be necessary or appropriate in connection therewith.

46. In exchange for the DIP Loans, the DIP Obligations will receive joint and several superpriority allowed administrative expense claim status in the chapter 11 cases; and the DIP Secured Parties will receive a first priority lien on all assets of the Debtors, including all property of their respective estates in the Cases, whether real or personal, tangible or intangible, now owned or hereafter acquired and all proceeds, profits, rents, accessions and substitutes thereof, that is not subject to (i) valid, perfected and non-avoidable liens in existence as of the Petition Date or (ii) valid and non-avoidable liens in existence as of the Petition Date that are perfected thereafter to the extent permitted by section 546(b) of the Bankruptcy Code; a first priority, senior priming lien on and security interest in all of the Debtors’ assets subject to certain excluded assets and carve outs.

47. The DIP Motion seeks further authority to grant liens to the DIP Secured Parties on the proceeds of the Debtors’ claims and chapter 5 causes of action. The DIP Motion, if granted, provides authority for the Debtors to use, among other things, in accordance with the

Budget, any cash collateral in which the Prepetition Secured Parties may have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to any diminution in value of their interests in the Prepetition Collateral arising from, inter alia, the Debtors' use of the Prepetition Collateral (including Cash Collateral), or the imposition of the automatic stay under section 362 of the Bankruptcy Code.

48. The Debtors, therefore, request immediate authority to obtain postpetition financing and use Cash Collateral on an interim basis, as set forth in this Motion and in the Interim Order, to prevent immediate and irreparable harm to their estates pending the Final Hearing.